

## Joint Stakeholder Statement by the Gender Equality Network, Myanmar



1. The Gender Equality Network (“GEN”) is an active inter-agency network that aims to facilitate the development and implementation of enabling systems, structures and practices for the advancement of women, gender equality and the realization of women's rights in Myanmar. Based in Yangon, GEN is comprised of over 100 national and international non-government organizations, civil society organizations, networks, and technical resource persons. Formerly known as the Women’s Protection Technical Working Group, GEN has worked collaboratively since 2008 to promote gender equality and women’s protection.

### **Women’s Rights and Gender Equality Since 2<sup>nd</sup> cycle UPR review**

2. Progress on women’s rights and gender equality in Myanmar has been slow since Myanmar’s 2<sup>nd</sup> cycle Universal Periodic Review (“UPR”) in 2015. Women continue to face many obstacles to full gender equality, in part as a result of decades of military rule and embedded societal patriarchy.<sup>1</sup> This gender inequality is reflected in and perpetuated by major limitations in Myanmar’s legal system, including the Constitution of the Republic of the Union of Myanmar (the “Constitution”).

3. The Government of Myanmar (“Government”) accepted a total of 170 recommendations as part of its 2<sup>nd</sup> cycle UPR. Of these, multiple recommendations urged Myanmar to promote gender equality, eliminate discrimination against women, including by adopting a CEDAW-compliant legal definition of discrimination, and take effective measures to combat violence against women.<sup>2</sup> Moreover, Myanmar is bound by international law to eliminate discrimination

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<sup>1</sup> Gender Equality Network, *Behind the Silence: Violence Against Women and their Resilience* (Nov. 14, 2014).

<sup>2</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Myanmar, A/HRC/31/13 (Dec. 23, 2015), specifically: 143.57-Adopt a legal definition of discrimination against women according to the Convention on the Elimination of All Forms of Discrimination against Women CEDAW (Austria); 143.55-Promote gender equality in all aspects of life and combat violence against women (Cyprus); 143.66-Enact and enforce legislation that guarantees comprehensive protection from all forms of violence against women, and that addresses impunity for all perpetrators (Sweden); 143.67-Take positive action to ensure protection of women against sexual violence and their access to legal mechanisms without discrimination (Namibia); 143.68-Develop a legal framework to prevent and combat violence against women and domestic violence (Serbia); 143.69-Address in legislation all forms of gender-based violence, both within as well as outside of marriage (Spain); 143.70-Take effective measures to prevent and combat marital rape and domestic violence, including the express criminalization of these practices (Portugal); 143.71-Strengthen policies to combat all forms of violence and discrimination against women and girls, including by criminalizing marital rape and prohibiting forced and early marriages (Paraguay); 143.77-Ensure impartial and effective investigation of violence perpetrated against women and violence perpetrated against children, and ensure reparations for victims and the right to a fair trial, including legal aid, for both the victim and the accused (Finland); 143.80-Combat impunity (Senegal); 144.46-Review the provisions in its penal code which contain punitive measures against women who have undergone illegal abortions (Norway); 144.72-Implement the National Action Plan for the Advancement of

and ensure women's equality. These commitments derive, *inter alia*, from obligations the Government has assumed by ratifying the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") as well as through international declarations to end violence against women, UN Security Council resolutions on Women, Peace and Security ("WPS Resolutions") and the Joint Communiqué signed with the Special Representative of the Secretary-General on Sexual Violence in Conflict in December 2018.<sup>3</sup>

4. Although multiple women's rights issues require attention, GEN, on behalf of its over 100 constituent members, would like to highlight the following two critical problems: (1) Women face continued inequality, including direct and indirect discrimination, in many aspects of life, and neither the Constitution nor the legal system guarantee women's equality according to international standards; and (2) No specific law fully protects women from all forms of violence and the draft Protection and Prevention of Violence Against Women ("PoVAW") law contains some shortcomings, indicating that more comprehensive approaches are needed to strengthen the legal framework to eliminate violence against women and further improvements are needed to meet international best practices.

5. To ensure women's full enjoyment of equality and to eliminate discrimination against women, GEN urges the Human Rights Council, as part of this 3<sup>rd</sup> cycle UPR of Myanmar, to recommend that the Government: (1) enact fundamental changes to the legal system, including constitutional amendments and legal reforms, to enshrine in law the CEDAW principle of substantive equality as a fundamental human right and eliminate both direct and indirect discrimination in Myanmar's legal system; and (2) amend the draft PoVAW law submitted to

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Women by: amending legislation to include sexual violence in conflict within the Preventing Sexual Violence Law, removing military impunity for human rights violations — including sexual violence, and appointing a Gender Advisor within the President's Office (United Kingdom of Great Britain and Northern Ireland); 145.24-Undertake the appropriate measures to prevent and combat domestic violence and sexual violence committed by military personnel and police officers against young girls and adolescents (Albania).

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereafter "CEDAW"; ratified in 1997]; UN Commission on Human Rights, *Convention on the Rights of the Child*, 7 Mar. 1990, E/CN.4/RES/1990/74, available at: <https://www.refworld.org/docid/3b00f03d30.html> [hereafter "CRC"; ratified in 1991]. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereafter "ICESCR"; ratified in 2018]; Women Peace & Security resolutions include: Security Council Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000) and subsequent resolutions, including S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008), S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009), S.C. Res. 1889, U.N. Doc. S/RES/1889 (Oct. 5, 2009), S.C. Res. 1960, U.N. Doc. S/RES/1960 (Dec. 10, 2010), S.C. Res. 2106, U.N. Doc. S/RES/2106 (June 24, 2013), S.C. Res. 2122, U.N. Doc. S/RES/2122 (Oct. 18, 2013), S.C. Res. 2242, U.N. Doc. S/RES/2242 (Oct. 13, 2015), S.C. Res. 2467, U.N. Doc. S/RES/2467 (Spr. 23, 2019). The Declarations to eliminate sexual violence include: The Declaration on the Elimination of Violence Against Women (Dec. 20, 1993) & the Declaration of Commitment to End Sexual Violence in Conflict (June 2014); Joint Communiqué of the Republic of the Union of Myanmar and the United Nations on Prevention and Response to Conflict-Related Sexual Violence (Dec. 7, 2018).

Parliament so that it meets or exceeds all international standards, and is gender-transformative, comprehensive and inclusive, and expeditiously pass the amended draft law. These recommendations are detailed more fully below.

**The Government Must Amend the Constitution to Enshrine the Principle of Substantive Equality as a Fundamental Human Right and Eliminate Both Direct and Indirect Discrimination**

6. The Government needs to fulfill its commitments to ensure that women enjoy substantive equality in Myanmar. International standards recommend that laws not only state that men and women are equal, but take into account the prevailing social, economic, political and other conditions that prevent women from experiencing equal outcomes as men. Equality does not mean that men set the standard and that women should simply meet that standard. Substantive equality requires acknowledging the ways in which women are different from men and responding to these differences with appropriate laws, policies and programs. According to CEDAW, women are entitled to equal outcomes as men, even if that means that women are treated differently, through adoption of temporary special measures or otherwise.

7. International guidance is clear that states must adopt CEDAW-compliant definitions of core gender equality concepts in foundational documents.<sup>4</sup> During its 2<sup>nd</sup> Cycle UPR in 2015, the Government accepted a recommendation to adopt a legal definition of discrimination against women that is in accordance with CEDAW.<sup>5</sup> The CEDAW Committee, which interprets and monitors implementation of CEDAW, also has recommended that the Government adopt a comprehensive definition of discrimination in line with CEDAW.<sup>6</sup> Nevertheless, the Government has yet to fulfill these recommendations.

8. Women in Myanmar still face discrimination, in part due to shortcomings in Myanmar's foundational legal instruments. The Government brought into force a new Constitution in 2008, after no public consultation and a spurious public referendum.<sup>7</sup> The Constitution contains some provisions addressing equal rights for women and non-discrimination, but these, even when considered together, are not comprehensive or CEDAW-compliant. The Constitution does not include a legal definition of discrimination against women in conformity with CEDAW and contains other provisions that inhibit the ability of women to realize their rights, such as provisions prohibiting women's roles in leadership and decision-making. These failures have extensive repercussions, such as hindering the formulation, interpretation, and dissemination of laws and policies protecting women's rights, divesting policy makers of a critical benchmark for assessing progress on the elimination of discrimination against women and depriving victims of discrimination of a legal system that adequately protects them.

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<sup>4</sup> CEDAW, *supra* note 3, at Art. 2(a).

<sup>5</sup> Recommendation 143.57 (Austria), *supra* note 3.

<sup>6</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Myanmar* (July 2016), U.N. Doc CEDAW/C/MMR/CO/4-5 at 15(d).

<sup>7</sup> Commission for Holding the Referendum of the Union of Myanmar, Announcement No. 12/2008 (May 26, 2008); Michael F. Martin, Cong. Res. Service, *Burma's 2010 Elections: Implications of the New Constitution and Election Laws* (Apr. 29, 2010).

9. To address these shortcomings, the Government must amend the Constitution. First, there should be explicit reference to the equality of women and men beyond a simple prohibition of discrimination on the basis of sex. A CEDAW-compliant definition of equality would state that women and men are equal and equally guaranteed fundamental civil and political rights to liberty, dignity, security of the person, participation in public life and equality before the law, as well as their social and economic rights to enjoy equality of opportunity and benefits. Equality of outcomes must be guaranteed to women and this benefit must accrue to all women, not just citizens.<sup>8</sup>

10. Further, the Constitution should define and prohibit both direct and indirect discrimination, following CEDAW guidelines. Indirect discrimination refers to any provision, law, policy or other administrative action that has the consequence of treating women differently, even if on its face it appears to treat both men and women the same. These definitions should refer to the international law principles in CEDAW and state explicitly that cultural and traditional practices and laws cannot be used to justify either direct or indirect discrimination against women.<sup>9</sup>

11. Additionally, the Constitution already includes multiple provisions that constitute both direct and indirect discrimination, which impede women's ability to realize their fundamental right to substantive equality and therefore should be amended. For instance, Article 352 of the Constitution states that "nothing in this Section shall prevent appointment of men to the positions that are suitable for men only." This directly and formally legalizes discrimination against women and perpetuates negative and limiting stereotypes about women in violation of CEDAW. Any discriminatory provision should be deleted from the Constitution.

12. Other Constitutional provisions indirectly discriminate against women, reinforcing gender inequality and contributing to women's low participation in decision-making and public office. Articles 109, 141 and 161 each mandate a specific quota of representatives directly appointed by the Defense Services and Article 59(d) requires the President and Vice- President to be well-acquainted with defense matters. Since women have traditionally served only as medical or administrative support in the military, these articles constitute indirect discrimination against women.<sup>10</sup> Moreover, recent efforts to increase the number of women in the military exacerbate the problem. Guidance issued in 2013 establishes different standards for women military recruits, such as a prohibition on marriage and a requirement of a secondary degree from "respected universities." Men are not required to meet these standards.

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<sup>8</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation 25 on Art. 4, Para. 1, of the Convention on the Elimination of Discrimination Against Women on Temporary Special Measures, UN Doc. HRI/GEN/1/Rev.7.

<sup>9</sup> CEDAW, *supra* note 3, at Art. 5; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Erturk, A/HRC/4/34 (Jan. 17, 2007).

<sup>10</sup> Bird, MieMie Winn, *Integration of Women and Gender Perspectives into the Myanmar Armed Forces to Improve Civil-Military Relations in Myanmar* (Nov.-Dec. 2019) available at: <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/November-December-2019/Byrd-Myanmar-Gender-Armed-Forces/>

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13. Section 351 holds that mothers, children and expectant women enjoy equal rights as prescribed by law. Although recognition of the special concerns associated with maternity can help to ensure substantive equality, the emphasis on women as mothers may serve to reinforce stereotypical gender roles and neglect the concerns of women who for various reasons do not bear children. This provision should be expanded to ensure that all women and girls, including pregnant women, regardless of their race, ethnic or national origin, religious belief, marital or family status, gender identification, disability, age, sexual orientation, or HIV status, shall enjoy equal rights with men.

14. At present no Constitutional provision guarantees women's reproductive rights and existing laws infringe on fundamental reproductive freedoms. Myanmar's so-called "Race and Religion Laws" interfere with these rights by denying women reproductive and marital decision-making.<sup>11</sup> Women have a fundamental right to control and make decisions about their bodies throughout their life cycle, including the right to decide on a method of contraception or whether to terminate a pregnancy, and when and whom to marry. These rights should be enshrined in foundational legal documents and contradictory laws should be repealed.

15. Finally, the Government needs to take steps to incorporate its obligations under international human rights treaties, including by reference, into domestic law. This inaction further limits the avenues of recourse for violations of fundamental human rights, including gender-based discrimination in Myanmar.

16. The Government has conducted two Constitutional review processes since 2008; one in 2013 and another in 2019-2020. The most recent review process was fraught with controversy and lack of consensus. Of the over 3000 potential amendments submitted, only 114 were ultimately voted on by Parliament and only four minor amendments received the required number of votes for adoption. The 114 amendments considered were mostly related to democratic governance issues, and none addressed the gender-related fundamental human rights issues highlighted in this statement.<sup>12</sup> Thus, the Government does not seem to have the requisite political will to ensure that Myanmar's Constitution provides sufficient gender equality and non-discrimination guarantees.

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<sup>11</sup> Georgetown Institute for Women Peace and Security, *Protection for Whom? Violations of International Law in Myanmar's New Race and Religion Protection Laws* (2015) available at: <https://giwps.georgetown.edu/resource/protection-for-whom-violations-of-international-law-in-myanmars-new-race-and-religion-protection-laws/>.

<sup>12</sup> Zulueta-Fulscher, Kimana, IDEA, *Looking Back at Myanmar's Constitutional Amendment Process*, (Apr. 8, 2020) available at: <https://www.idea.int/news-media/news/looking-back-myanmar-constitution-amendment-process>; see also Heugas, Annabelle, Konrad-Adenauer Stiftung, *Myanmar's Constitutional Amendment Process in 2020* (Jun. 2, 2020) available at: <https://www.kas.de/en/web/myanmar/laenderberichte/detail/-/content/myanmars-verfassungsaenderungsprozess-im-jahr-2020>; Aung, Sam Yamin, THE IRRAWADDY, *Myanmar Parliament Indefinitely Postpones Referendum on Charter Amendments* (May 21, 2020) available at: <https://www.irrawaddy.com/news/burma/myanmar-parliament-indefinitely-postpones-referendum-on-charter-amendments.html>.

## **Recommendations**

17. In order to ensure that the equality guarantees in the Constitution encompass a substantive understanding of equality, and function to eliminate gender stereotypes and discrimination, we recommend: (1) including CEDAW-compliant definitions of gender equality and substantive equality in the Constitution; (2) amending the Constitution to define and explicitly prohibit direct and indirect gender discrimination; (3) repealing or amending Constitutional provisions that directly or indirectly discriminate against women, including provisions that require a military background to hold certain offices; (4) adding a Constitutional provision to ensure women’s reproductive rights; (5) amending the Constitution to reserve, at a minimum, one third of all seats in regional and national parliaments for women; (6) recognizing in the Constitution that temporary special measures may be adopted to accelerate women’s enjoyment of equality; (7) amending the Constitution to specifically incorporate international instruments to which Myanmar is a party, such as CEDAW; (8) conducting a thorough review of existing laws to ensure that they are gender transformative, comply with international equality mandates and do not directly or indirectly discriminate against women; and (9) reviewing existing legal mechanisms to ensure that judicial or administrative review is a viable option for rights violations.

## **The Government Must Pass a Comprehensive Violence Against Women Law That Meets or Exceeds International Standards**

18. Under international law, gender-based violence – violence directed against an individual because of biological sex or gender identity — is recognized as a violation of human rights and fundamental freedoms, and as constituting an impediment to the realization of equality, development and peace.<sup>13</sup> The Declaration on the Elimination of Violence Against Women acknowledges violence against women as both a cause and consequence of women’s inequality in relation to men and requires states to take action to eliminate it. Regionally, the ASEAN Regional Plan of Action on the Elimination on Violence against Women calls on states to take multiple actions to eliminate violence against women.<sup>14</sup> Certain categories of women, such as women in conflict settings, require additional protections. Addressing violence against women in all contexts, therefore, is required by international law and entails tackling root causes of the problem in all settings, from the home to the international arena.

19. To achieve this goal, countries are obligated to act with “due diligence” to eliminate all forms of discrimination against women. Under the due diligence standard, countries have a duty to take positive action to prevent and protect women from violence, punish perpetrators of

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<sup>13</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation 35 on gender-based violence against women, updating General Recommendation 19, CEDAW/C/GC/35 (Jul. 14, 2017) available at: <https://www.ohchr.org/en/hrbodies/cedaw/pages/gr35.aspx>.

<sup>14</sup> ASEAN Regional Plan of Action on the Elimination of Violence Against Women (Jan. 25, 2018) available at: [https://asean.org/?static\\_post=asean-regional-plan-action-elimination-violence-women-asean-rpa-evaw](https://asean.org/?static_post=asean-regional-plan-action-elimination-violence-women-asean-rpa-evaw).

violent acts and compensate victims of violence.<sup>15</sup> Any process to draft and enact laws for this purpose should be undertaken with the direct input of women, women's organizations, other stakeholder groups, legal experts and government officials, and should recognize that culture is not static but capable of adapting to new understandings of women's status and rights.

20. Currently, the legal system in Myanmar does not fully meet these international standards to protect women from violence and to provide adequate redress and recourse for victims. Existing laws, including provisions of the colonial-era Penal Code of 1861, reflect outdated stereotypes that run counter to the contemporary values of Myanmar society. Moreover, the limited existing legal protections for victims of violence are a patchwork of provisions that do not fully comply with international best practices, including guidance provided by the CEDAW Committee.<sup>16</sup>

21. In 2013, the Government began drafting a PoVAW law in order to improve and expand the legal framework for victims of violence in Myanmar. It was believed that a new PoVAW law could effectively fill the gaps in existing legislation, particularly with respect to sexual violence, and supersede discriminatory or insufficient measures already in place. Specifically, a comprehensive new law could address domestic violence and victim support, where legislation currently does not exist, strengthen existing provisions in the Constitution and provide a definition of discrimination that harmonizes with CEDAW. Drafting a comprehensive PoVAW law could also mandate training for law enforcement officers and the judiciary on gender and women's human rights issues, and specify measures and mechanisms for monitoring and enforcement of the law. The initiative to develop a PoVAW law was part of a broader initiative to effect democratic law reform in other areas, including foreign investment, property, employment, social security and health.

22. After six years of a protracted drafting process, the Government finally submitted a draft PoVAW law to Parliament in January 2020; other laws, particularly those related to the economy or foreign investment, were finalized and passed years earlier.<sup>17</sup> While the law submitted to Parliament is the result of multiple drafts over six years of negotiations, women's groups were afforded only limited input into the final version. As a result, the draft law does not comply fully with international standards to adequately protect women. If the PoVAW law were to be passed as currently drafted, it would truly miss the mark as it falls far short of providing the protections required under international law, does not fulfill the Government's due diligence obligations and does not adequately incorporate civil society concerns.

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<sup>15</sup> The Due Diligence Project, *The Due Diligence Principle and the Role of the State; Discrimination Against Women in Family and Cultural Life* (Jan. 2015).

<sup>16</sup> Gender Equality Network, *Myanmar Laws and CEDAW. The Case for Anti-Violence Against Women Laws: Briefing Paper, Background, Legal Analysis and Case Studies from Cambodia, Thailand and Vietnam* (2013); Gender Equality Network, *Developing Anti-Violence Against Women Laws* (Jan. 2013).

<sup>17</sup> Michelle Onello and Phyu Phyu Sann, *Gender Equality and Sexual Violence in Myanmar: Part of the Problem is Preventing a Cure*, Mizzima News (Nov. 19, 2019) available at: <http://mizzima.com/article/gender-inequality-and-sexual-violence-myanmar-part-problem-preventing-cure>.

23. Many of the draft law's shortcomings are significant, but highlighted here are three major issues: first, the law fails to adopt definitions for core concepts that provide maximum protection for women and meet international standards; second, the penalties do not correspond to the level of seriousness of the offense, often leading to weak and ineffective punishment for crimes, and extenuating factors for penalties are not comprehensive; and third, implementation provisions are insufficient to ensure full and adequate protections for every type of victim.

24. With respect to inadequate definitions, multiple core concepts are not defined in conformity with international guidance. For example, the definition of rape should follow the Rome Statute and prohibit "the penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body without her consent."<sup>18</sup> Similarly, the definition of sexual harassment and violence in the workplace should follow guidance promulgated by the International Labour Organisation.<sup>19</sup>

25. The definition of women should be expanded to include a biologically female person or a person whose gender identity is female of any age. This definition would then include persons who deviate from their assigned gender at birth or the binary gender system, such as transgender persons. In fact, the Myanmar Youth Policy (2019) formulated by the Ministry of Social Welfare, Relief and Resettlement prohibits discrimination based on gender, sexual orientation and gender identity. Those whose gender identity is female should be protected by this law.<sup>20</sup>

26. Similarly, the definition of consent is narrow, and does not include situations and conditions where lack of consent is presumed. Therefore, to avoid any misinterpretation and to conform to guidance provided by the United Nations, the definition should be enhanced and expanded.<sup>21</sup> Specifically, the definition should recognize that consent can never be freely given in coercive environments, such as a state of emergency or armed conflict, or by a person with mental disability or under intoxication due to any substance who does not have clear knowledge of the

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<sup>18</sup> International Criminal Court, Rules of Procedure and Evidence, ICC-ASP/1/3, Sept. 9, 2002, Part B, Elements of Crimes, at 119, 141; see also UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, ISBN No.: 92-9227-2276.

<sup>19</sup> International Labour Organisation, C190: Violence and Harassment Convention, 2019 (No. 190) available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190); Human Rights Watch, *ILO: New Treaty to Protect Workers from Violence, Harassment* (June 21, 2019) available at: <https://www.hrw.org/news/2019/06/21/ilo-new-treaty-protect-workers-violence-harassment#>.

<sup>20</sup> The Global New Light of Myanmar, *Myanmar introduces National Youth Policy on International Youth Day* (Aug. 13, 2019) available at: <https://www.globalnewlightofmyanmar.com/myanmar-introduces-national-youth-policy-on-international-youth-day/>.

<sup>21</sup> UN Women, *Handbook for Legislation on Violence Against Women* (2012), at 25, available at: <https://www.unwomen.org/en/digital-library/publications/2012/12/handbook-for-legislation-on-violence-against-women>.



consequences of consent. Moreover, the law must acknowledge that consent is not transferable between acts or individuals and may be withdrawn or terminated at any time.

27. The definitions of violence and sexual violence are also unsatisfactory.<sup>22</sup> Violence must be defined broadly, to include all acts of violence, including technology-related violence, harmful traditional practices and other violations such as arbitrary deprivation of liberty, whether occurring in public or private life. The definition of sexual violence must exclude “unnatural sex acts.”<sup>23</sup>

28. The law should expand the definitions of economic and psychological violence. Economic violence must include acts committed by persons other than family or household members and the scope of prohibited acts or behaviours should include anything which causes economic harm to women outside of the family, such as property damage, restricting access to financial resources, food, basic needs, education or the labour market and not complying with economic responsibilities, such as alimony.<sup>24</sup> The definition also perpetuates inequality by assuming that only males are heads of households. The definition of psychological violence must be expanded to include any form of abuse causing emotional harm or harm to a person’s reputation, including acts or verbal abuse, harassment, control, humiliation, intimidation, negligence, isolation, or disgrace.

29. Penalties in the new law do not correspond to the level of seriousness of offenses and extenuating factors for penalties are not comprehensive.<sup>25</sup> All penalties included in the law should be reviewed to ensure that they are proportional to the severity of the crimes. For example, aggravating factors for punishment should include situations where the victim has a disability or where violence is committed by service providers. Moreover, some crimes call for weak penalties, which will undercut the effectiveness of the law. For example, there should be greater penalties for violence against minor girls, as defined by the recently-passed Child Law.<sup>26</sup>

30. Another main area of concern is the insufficiency of implementation, resource and funding measures.<sup>27</sup> The law must specify in detail how the law will be implemented, including providing for the establishment of a committee dedicated to implementation. It must enumerate how

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<sup>22</sup> Draft Protection and Prevention of Violence Against Women Law (Jan. 25, 2020) [hereafter “PoVAW Law”], at 3.c.

<sup>23</sup> PoVAW Law, *supra* note 21, at 3.c.iii.

<sup>24</sup> PoVAW Law, *supra* note 21, at 3.c.iv. The definition should conform to the ASEAN Regional Plan of Action on the Elimination on Violence against Women, *supra* note 13, at 68.

<sup>25</sup> PoVAW Law, *supra* note 21, at 56.

<sup>26</sup> Child Rights Law, Pyidaungsu Hluttaw Law No. 22/2019 (July 2019) available at: <http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/national-league-for-democracy-2016/myanmar-laws-2019/pyidaungsu-hluttaw-law-no-22-2019-child-law-burmese.html>; UNICEF, The enactment of a new Child Rights Law by the Government of Myanmar a landmark step: UNICEF (July 24, 2019) available at: <https://www.unicef.org/myanmar/press-releases/enactment-new-child-rights-law-government-myanmar-landmark-step-unicef>.

<sup>27</sup> PoVAW Law, *supra* note 21, at 3.t.

committee members will be chosen, identify who will lead implementation efforts and include women in all implementation processes and mechanisms. Importantly, the Government must adequately budget for and resource the law and all implementation efforts, since ensuring adequate funding, support and other resources for implementation will be crucial to the success of the law.

31. Moreover, the law does not protect against the negative impact of regressive norms, notions of family and gender roles. For example, the law should not require that implementation procedures focus on “social cohesion and family integration to reduce family separation” as this would weaken the justice system for victims of violence by prioritizing family integration over individual harm.<sup>28</sup> In addition, committee members, witnesses and service providers might face hostility, ostracism and stigmatization from other community members who view their actions as threatening the traditional normative framework. The law must include robust protections for these important actors and service providers, utilizing international best practices contained in the Declaration on Human Rights Defenders.<sup>29</sup>

32. Finally, the law should ensure that no group is discriminated against in the application of the law. Currently, there are no protections from discrimination based on sexual orientation or disability, groups which should be protected from discrimination in the law.<sup>30</sup>

### **Recommendations**

33. In order to ensure that women and girls from all vulnerable groups are protected from violence in accordance with international standards, we recommend: (1) amending the draft PoVAW law to reflect international best practices, including by revising problematic definitions and ensuring commensurate and adequate penalties for crimes; (2) allowing, accepting and incorporating civil society and public comment on the draft PoVAW law; (3) ensuring that sufficient implementation mechanisms are in place and allot adequate funding and resources so that the PoVAW law effectively protects women from violence; (4) ensuring that the principles of non-discrimination against all gender, religious, ethnic and other groups underpins the PoVAW law; (5) expanding the scope of the PoVAW law to cover violence in all contexts, including conflict settings; and (6) ensuring that the PoVAW law provides effective, accessible and sufficient legal remedy for all victims, including minors, the disabled and transgender and ethnic women, regardless of the status, wealth or military status of the perpetrator.

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<sup>28</sup> PoVAW Law, *supra* note 21, at 6.f.

<sup>29</sup> UN General Assembly, Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders), A/RES/53/144 (Mar. 8, 1999); Human Rights Council, *Situation of women human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/40/60 (Jan. 10, 2019).

<sup>30</sup> PoVAW Law, *supra* note 21, at 13.