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**Women's access to justice system in  
Myanmar**

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## Abbreviation

<b>UN</b>	United Nations
<b>CEDAW</b>	Committee on the Elimination of Discrimination against women
<b>CSOs</b>	Civil Society Organizations
<b>SDGs</b>	Sustainable Development Goals
<b>UNGO</b>	The Union Attorney General's Office
<b>UNDP</b>	United Nations Development Program
<b>NGO</b>	Non-Governmental Organization
<b>NPVAW</b>	The National Prevention of violence against Women
<b>NSPAW</b>	The National Strategic Plan for the Advancement of Women

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## 1. Introduction

Access to justice strengthens justice systems enables citizens to address their needs and to resolve problems. Moreover, access to justice is an essential element of human rights, democracy, and the rule of law [1, p.5]. The constitution of Myanmar states that all citizens shall enjoy the right of equality before the law, the right of liberty, and the right of justice [2, p.7]. However, justice is a broad term on which one can have different perspectives. [3, pp.10-15]. According to the United Nations Committee on the Elimination of Discrimination against Women (UN CEDAW) access to justice requires women are included, which means adopting “a view to empowering [women] as individuals and as rights holders”[4, p.3]. The committee that monitors the implementation of UN CEDAW, made some recommendations for improvement including that a justice system should follow “international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women” [4, p.6].

UN Women developed a toolkit to improve access to justice for women. According to UN Women, there is an important role in improving women’s access to justice for ‘civil society organizations’ (CSOs) as they conduct “advocacy, capacity development, right awareness, strategic litigation and monitoring of women’s rights” [5, p.100] .

The importance inclusive access to justice is also recognized by the courts of Myanmar: the Supreme Court of Myanmar identified five “strategic Action Areas”, the first one of which was to “protect public access to justice”[6, p.4]. Justice is also given importance in the Sustainable Development Goals (SDGs). For this paper, SDG 5 on ‘gender equality’ and 16 on ‘peace, justice and strong institutions’ are of particular importance [7].

Women face many challenges when try to shape the outcome of negotiations or try to influence decisions [8, p.18]. In Myanmar, there are still social biases against women, which especially affect women in positions of leadership. For example, women MPs were on average more educated than men, but were less confident and active than male. However, there are some steps for improvement being taken, for example, the Ministry of Social Welfare, Relief and Resettlement established the “Myanmar National Committee for Women Affairs” in 1996 to achieve the goals of the Beijing Declaration. However, initial progress was seen as insufficient and the committee was put on hold in 2003. Recently, in 2012, it was reestablished and the Ministry developed the National Strategic Plan for the Advancement of Women 2013-2022 in cooperation with other ministries and CSOs [9, pp.1-6].

### **1.1. Objectives and research questions**

An overview of the challenges women face when it comes to accessing justice in Myanmar, an overview of the departmental processes of courts in Myanmar that may contribute to gender inequalities and some policy options to improve access to justice for women in Myanmar. To support women's access to justice based on Goals 5 and 16 of Agenda 2030.

#### Research Questions

1. What challenges do women encounter when trying to access the judicial system in Myanmar?
2. What assistance programs (by government and civil society) currently exist to help women get access to justice?
3. What are the policies to increase access to justice for women?

## **2. Fundamental components of the Myanmar justice system**

In Myanmar there have been different judicial systems during the colonial period, the post-independence period, and the Revolutionary Council period, and the present-day. The present-day system was set up under the 2008 Constitution and the 2010 Union Judiciary Law [10, p.5]. There are four levels of courts:

- One Supreme Court of the Union
- 14 State and Regional Courts under the Supreme Court of the Union
- 67 District and Self -Administered Area Courts
- 342 Township Court.

According to the rule of law principles, the judicial system is built on legal certainty, equality and transparency [11, p.480]. To address issues of women's unequal status in Myanmar, it is necessary to enshrine women's rights in the law and find mechanisms of action to achieve those rights in practice. A constitution is the foundation of the structure of the political and legal system of a political community and reflects core values and aspirations[12].

### **2.1. Legal Framework**

A legal framework is a collection of constitutional, legislative, regulatory, jurisprudential and managerial rules [13]. This section will discuss international conventions first, then the constitution, and then domestic law.

### *2.1.1. International Conventions*

#### *2.1.1.1. CEDAW*

The committee that monitors the implementation of CEDAW, recommended (in article 15 sub i) in 2015 that all parties should “[e]nsure that women human rights defenders are able to access justice, and receive protection from harassment, threats, retaliation and violence.” In other words, women should be able to rely on the justice system. Getting rid of harmful myths and stereotypes about women is crucial step in ensuring equality and justice for victims and survivors[4].

#### *2.1.1.2. Beijing Declaration*

There are article 361 in the Beijing declaration. Among them, Article 45, mentions that “Women’s rights are human rights.” It also highlights women’s empowerment and aims to accelerate the implementation of the advancement of women and the achievement of equality between women and men of human rights and justice and women’s issue. These are the only way to build a sustainable and developed society, according to the declaration. To empower of women and ensure equality of women and men are necessary components to achieve political, social, economic, cultural and environmental security among all peoples [14, p.16].

#### *2.1.1.3. Sustainable Development Goals*

According to the Sustainable Development Goals (SDGs), realizing gender equality and empowerment of women and girls are an importance step to progress through all the Goals and targets. Women and girls must have equal access to education, economic opportunities and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels. To close the gender gap, a significant increase in investment in gender equality and the empowerment of women at the global, regional and national levels is imperative [15].

### *2.1.2 Constitution*

In the 2008 Constitution of Myanmar, there are some articles that discuss gender equality: Sections 347 and 348 mention the legal equality of all citizens and prohibit discrimination on the basis of sex, section 249 highlights equal opportunities in public employment and occupation and section 350 points out equal pay for equal work. However, the same constitution also has some problematic parts in it when it comes to gender. For example, article 352 mentions that the constitution cannot prevent that certain jobs are “suitable for men only.” This may be exacerbate social norms that stand in the way of women pursuing a professional career. Another article 343(b)

and 445 that may disadvantage women is the one gives the military a permanent role in the parliament; 25 percent of the seats in both houses are held by military. However, women were removed from military services in Myanmar[16].

### 2.1.3 Domestic Law

Myanmar uses the “1861 The Penal Code”, but has made some changes to it in 2016. The penal code that Myanmar currently uses does not effectively cover the problems faced by Myanmar women and has some gaps[17, p-3]. Myanmar’s Parliament has adopted three laws concerned with discrimination on the basis of race or religion, which also provide roots for gender-based discrimination against women (which would be a violation of the Government’s obligations under CEDAW). They are:

- (1) The Buddhist Women’s Special Marriage Law (50/2015),
- (2) The Population Control Healthcare Law and
- (3) The Monogamy Law (54/2015).

The first one contravenes CEDAW because the Buddhist Women’s special Marriage Law breaks international norms protecting the rights of women to enter and fully participate in marriage on an equal basis with men. The second aims to control population growth, which violates women’s rights to decide, on an equal basis with men, the number of and spacing between children. The last one is was passed by Parliament to prohibit extramarital affairs. In accordance with International human rights, this Bills adopts discriminatory approach to obey the rules of marriage[18, p.4].

Some more positive domestic policies are:

The National Strategic Plan for the Advancement of Women (2012-2022) which was launched by the Myanmar Government to develop and strengthen laws to protect women affected by violence [19, p-4].

The National Prevention of violence against Women (NPVAW) has been drafted, but not approved yet. There are 16 Chapters in this plan. It is important as some parts of the “Penal Code 1860” is not relevant nowadays. The NPVAW aims to address the problems for women in terms of being vulnerable to danger and assault. The current system is not efficient in getting women justice. There is no enacted law to protect for women if they are facing difficulties in their community so this law is needed for women. If this draft bill becomes a law, it can help women’s physical and mental dignity easily and women’s justice can be supported by law[17].

## **2.2. Institutional Components**

### *2.2.1. Supreme Court*

The Supreme Court of the Union is the highest of the State Judiciary of the Union of Myanmar. In 2012, Myanmar's judiciary consisted of 1128 judges of which more than half were women (females 570 and males 558). However, in the High Court, men exceeded women 36 to 16[20]. Even more troublesome, none of Supreme court justices were women[21] .

### **Duties and Powers of the Court**

In accordance with the Constitution 2008 and the Union Judiciary law 2010, courts are established with High Courts of the Region and the State, District Courts, Township Courts and other courts constituted by law (special courts). The Supreme Court of the Union is the superior court and it has supervisory powers over all courts; It oversees all courts in the Union and makes rulings on matters that are of high importance [22, p.18] .

The judiciary of Myanmar is committed to supporting equal access. The Supreme Court is conducting a five year plan that is organized into strategic areas and objectives that highlights and emphasizes the right of equality, liberty and justice for the people of Myanmar. The strategic five-year plan integrates the fundamental rights of the citizens guaranteed by the constitution and by the Beijing Statement of Principles into the work of the judiciary. Judges and court staff support all people and provide information to all citizens. The plan states that the highest quality of justice for the public requires promoting trust and confidence in the courts as well as ensuring the courts are accessible to all. To strengthen relationship with other branches of Government, CSOs and international institutions are working together to create a fully functioning and independent Judiciary [23].

As for cases, according to the Supreme Court's records 2011 about 300,000 cases were dealt with that year. Around 250,000 of them were criminal cases, and only 50,000 were civil cases. Unfortunately, there was no further breakdown by type of case for gender analysis on cases [21].

### *2.2.2. Attorney General*

The Union Attorney General's Office (UAGO) is a key sector of administrative law which promotes the development of the principles of judicial review [24, p.23]. As improving access to justice is to advance the rule of law, the Union Attorney General is the supervisory authority of the country's prosecution. It is noticeable that there is a large proportion of women working in UAGO but this seems to be because the government hired recent graduates, many of whom were women,

and not because of some policy to ensure a gender balance in the prosecution. However, Myanmar has never had a female attorney general, a female deputy attorney general, or a female director general [21]. The Attorney General gives legal support and advice to the President and Hluttaw on international treaties, drafts and amendment laws and makes certain that actions by the cabinet are in line with the Constitution and international human rights law [25, p.10].

### *2.2.3 Compare with other ASEAN countries*

Compared to other countries in the region, women's representation in the judicial system in Myanmar looks promising [21]. However, according to the UN women Report Progress of the Worlds Women 2011-2012 as cited in an ADB report on gender equality and women's rights, in Myanmar only a quarter of judges and around one-fifth of prosecution staff in East Asia and the Pacific were women during 2011-2012. In South – East Asia, during 2000-2012 women made up 9 percent of judges and 4 percent of prosecution staff [21]. However, one should be careful when looking at the proportion of women judges in Myanmar as a way to measure gender sensitivity of the judiciary, because the number of women alone does not show the kind of job or the quality of work women perform. The ADB used informal discussions to gather information and found that the jobs women performed in the judiciary in Myanmar were not considered as prestigious as in some other countries [21].

## **3. Challenges for women's access to justice**

### *3.1. Social economic*

Reducing the barriers to equal participation in the Asia- Pacific region would benefit women, societies and economies. In 2018, Myanmar was ranked 106 out 189 countries for gender inequality in global and regional indexes. To achieve SDGs by 2030, which Myanmar is strongly committed to do, women's economic empowerment will be critical to achieve SDG 5 as well as many other goals. An important element is low participation rates of women on the labor market [26]. If women were entering the labor market, it would enable to benefit from "gender dividend": increase the market the steps of the female population [27], as pointed out by UNFPA in the 2014 census report [28].

For women have poor access to financial services and lack of resources and skills, there is a training to successfully start and grow business. Myanmar is a middle income country and the economy has grown at a rate of 7.3 percent per year from 2010 to 2016. UNDP/UNCDF (UN Capital Development fund) project will target 150,000 women to support to get access their

financial services. UNDP aim to leave no woman behind and within 2030 framework, women's economic empowerment will be promoted by engaging with the Myanmar government [29].

## Cultural

According to Myanmar Constitutional, Article 3, "The State is where multi-National races collectively reside" so Myanmar is a multicultural society with extensive cultural, linguistic, and religious diversity. Gender differences are present in Myanmar, but they are sometimes justified with cultural and religious arguments; different treatment of men and women are sometimes rooter in religious belief. For example, the Theraveda Buddhist concept "hpon" denotes a natural quality of men; women are made to be inferior in terms of their ability to become enlightened. Only men can become monks and only monks can become Buddha (i.e. enlightened). For a woman to become enlightened she must be reborn as a man in her next life[29] .

### ***3.2. Education***

In the justice system, education is also important problem for women accessing justice as women are less educated on average and are more likely to run into language barriers [30, p.69]. Problems that may partly cause the lack of education are transportation, safety, teacher shortages, the expectation that women and girls work to provide for men, and a lack of opportunities for women to pursue higher education. In addition, the government could draw higher education policies and curriculum reform to make it more gender-equal. In addition, civil society organizations could play a role for high-quality education, without gender gaps [31, pp.72-73].

### ***3.3. Inadequate legislation and enforcement***

During the drafting of the national legal system, a gender lens was not used so there is a the lack of legislation to protect women and their rights specifically. In Myanmar, there is no framework or definition of domestic violence yet although a law is now being drafted and is expected to be submitted to the Parliament soon. According to the CEDAW committee, there is a need for laws to improve women's empowerment and their access to justice [30, pp.55-63].

### ***3.4. Financial***

Women accessing the justice system sometimes incur big costs, which involve lawyer's fees, forensic reports, transport and bribes, among others. Women's access to legal aid is an important step to reduce the costs. Especially the cost of travelling to court can be prohibitive in rural areas; courts are situated in downtown areas and victims may spend their time going to courts [32].

#### 4. Mechanisms to promote women’s access to justice system

Justice mechanism is also used within a legal system to resolve disputes or deliver justice. Legal systems measure women’s access to justice towards law [33]–

*Table 1: Mechanisms to promote women’s access to justice system*

No	Country	Policies	Programs	NGO/Civil society
1	Philippines	<ul style="list-style-type: none"> <li>-To build the quality of women intellectually</li> <li>-To change the form of a program to support women and assist them into right implementation within locally [34].</li> <li>-To support an adequate legal framework for women’s equality directly based on international human rights law as prescribed under CEDAW [35, p.19] .</li> </ul>	<ul style="list-style-type: none"> <li>-Career Advancement of women in Government service,</li> <li>- Merit Promotion Plan</li> <li>-Director of women on the Move [34],</li> <li>-The Regional Programme on Improving Women’s Human Rights in Southeast Asia [35, p.42] .</li> </ul>	<ul style="list-style-type: none"> <li>-NGOs inform women of their rights, supporting them with legal and counseling services[34, p-72] .</li> </ul>
2.	Myanmar	<ul style="list-style-type: none"> <li>- awareness raising on CEDAW, especially on what domestic violence is</li> <li>-special training of judicial officers to ensure human rights of women and girls when taking legal action.</li> <li>- build capacity of policy, judiciary, and health care staff when it comes</li> </ul>	<ul style="list-style-type: none"> <li>-build community-based working committees of men and women to work in preventing violence against women.</li> <li>- Opening one-stop services to provide counselling and legal services for women</li> <li>-Ensure that women have access to</li> </ul>	<ul style="list-style-type: none"> <li>-Disseminate information on how to seek justice in Myanmar[20] .</li> </ul>

No	Country	Policies	Programs	NGO/Civil society
		to recognizing and responding to all forms of violence against women and girls.  -increase men's participation in preventing violence against women and girls [36, p.14].	services, in both urban and rural areas [36, p.15].	

### UN women's Program

UN Women implemented a regional program to improve women's rights (as set out in CEDAW) in Southeast Asia with the help of the Foreign Affairs, Trade and Development, Canada (DFATD). The program was introduced in Cambodia, Indonesia, the Lao People's Democratic Republic (Lao PDR), Myanmar, the Philippines, Thailand, Timor-Leste and Viet Nam. One of the key elements of the program is to improve women's access to justice and to develop government capacity (executive, legislative and judiciary) and civil society organization. To implement the regional program in Southeast Asia, UN Women has been working to improve understanding of CEDAW among judges and courts and to build the system of courts [20].

### 5. Conclusion

This research primarily focused on the roles of women to get justice in societies and discusses various barriers and challenges including traditional and religious norms, lack of education and the gap between the CEDAW and the 2008 constitution. We could see that there is a very limited number of female representation to get justice and there are obstacles to getting justice due to the lack of experiences in public discussions to get equal result and opportunities. Women's time devoted to doing household labor also poses a difficulty for going to court. Women lack confidence in decision making due to traditional cultural norms in the household sphere. Women can face resentment from men when they make their voices heard. The government has established the NSPAW recently and other national action plans for women but implementation in

reality is not very effective. The new laws could be strengthened and harmonized with the CEDAW. It is important that the process of amendment for women's justice engages women's organizations, other stakeholders as well as legal experts and Government officials. In other words, the Government could improve access to justice by involving more women as it builds capacity of its judiciary and judicial system.

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