

WOMEN & THE LAW

Governments should:

- Provide constitutional guarantees and/or enact appropriate legislation to prohibit discrimination on the basis of sex for all women and girls of all ages and assure women of all ages equal rights and their full enjoyment;
- Embody the principle of the equality of men and women in their legislation and ensure, through law and other appropriate means, the practical realization of this principle;
- Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice...

- **Beijing Platform for Action, Paragraph 232**

The Government is making efforts to promote development of Myanmar women by legal measures and social and economic programs for their welfare in all fields.

- **Shwe Mann Maung, "Myanmar Women's Day"**¹

This regime puts the right to life, liberty, and physical integrity – when it is not simply violated – permanently at risk. The rule of law cannot be said to exist and function, as the judicial system is subject to a military regime and serves only as a handmaiden to a policy of repression.

- **UN Special Rapporteur on Myanmar Report to the General Assembly, 1999, Paragraph 52**

I only worked in the orchards day by day, and was never interested in the law. CINT 28

OVERVIEW

The legal system in Burma is a labyrinth of rules and regulations that often conflict, are inconsistently applied and are randomly overruled at the whim of the military regime. In the absence of a constitution, the judicial and legislative powers are not independent but vested in authorities appointed by the ruling government. When determining individual cases, judges have recourse to traditional customary law, statutory law and the more recent changes and developments in the law. However, these are constrained by a series of military decrees and orders promulgated under the pretext of martial law. Under Burmese case law, individual case judgements are binding, unless overruled in subsequent cases. Accordingly, with the overlap between the judiciary and the military, the legal system has become a vehicle by which the military can enforce their ideals. Even the intervention of international law and its norms have little effect, as the standing of international to domestic law is uncertain but presumed to be hierarchically inferior, and the regime has paid

scant heed to its international human rights treaty obligations.

Any discussion of women's recourse to the law in Burma must recognize that, for the majority of Burmese women, the mere idea of calling upon the law to uphold their rights is not conventional. Lack of knowledge of legal rights, lack of confidence in the integrity of the legal system and lack of evidence of the success of such action combine to ensure that women in Burmese society are not afforded the protection they are due. In its present form, the law as it is written and practiced originates from and preserves gender discrimination. Women are being and have been largely excluded from the creation and interpretation of the law. Where there are provisions which deal directly with what are perceived to be women's issues, these are founded on the idea that women, rather than being equal, are the weaker sex and are in need of protection and often supervision. In particular, customary law, which rules on cases of marriage and divorce, is explicitly discriminatory, and in practice leaves women at a great disadvantage in the event of marital dissolution. In

short, in some of the most significant areas, the law in Burma does not accord women equal status with men, and in its current practice, contravenes the letter and spirit of the CEDAW.

FOUNDATIONS OF THE LAW IN BURMA

In most democratic countries, the constitution invests the responsibility for enacting laws in a legislative body of elected representatives, and for administering them in a separate judicial arm of the state. The law as it exists in Burma is being administered in the absence of a constitution, through judges appointed by the SPDC. As the parliament has not functioned since the SLORC seized power in 1988, the legislative function is being exercised by the ruling military junta.

The Constitution

The truth of the matter is that the main task of the elected representatives in the 1990 elections was to frame a new constitution and not to form a government.

- Response by the SPDC delegation to the CEDAW Committee

A constitution comprises the fundamental principles by which a State is governed and lays down the basis upon which power is exercised. In itself, it is the ultimate source of law in a country. Burma has been ruled by a series of military dictatorships since 1962. Over the last 37 years, confidence in the constitution has waned considerably, and at present there is no functioning constitution in place. The 1947 constitution, drawn up by a constituent assembly and adopted before the country's official independence from Britain, was replaced in 1974 by a constitution written and voted in by public referendum under the Burma Socialist Programme Party, the military regime that governed Burma during the 1970's. Both the 1947 and 1974 constitutions contained general guarantees of women's rights, however these were accorded specifically to citizens of the state, rather than to all those residing in Burma, which is significant for the many women who do not have full citizenship or may be unable to prove their citizenship.

ALTERNATE CONSTITUTIONS

The absence of a constitution in Burma has prompted other groups to draft provisional constitutions to be enabled when democracy is reestablished. The NLD, on the 6th anniversary of the 1990 election, after withdrawing its members from the National Convention, announced its intention to commence drafting a constitution. In response, the SLORC issued Order No. 5/96, banning groups that obstruct the National Convention and declaring it illegal for any other individual or body to draft a constitution, effectively eliminating the possibility of popular participation in drafting. As a result, little to date has been released by the NLD about their own drafting process.

Groups in exile have also been drafting constitutions in anticipation of their return. The National Council of the Union of Burma (NCUB) has worked for over a decade on the constitution for a future "Federal Union of Burma." It aims to provide guarantees of fundamental human rights for all the citizens of Burma, to end repression in all its forms and to pronounce the authority of a just and democratic government. The NCUB have expressed their willingness to listen to the people of Burma and consider the basic needs of all ethnicities in the process of drafting a fair constitution. Article 14 of the draft enshrines the inalienable rights to life, respect, equality before the law and freedom of thought. It guarantees that enslavement, forced labour and torture will be barred. Article 15 incorporates freedom of expression, publication, information, worship and assembly and allows for freedom of movement and labour.

While this draft of the constitution is infinitely more favourable to the protection of democratic and minority rights than that of the SPDC, it is not without its critics. Women's groups in exile have objected to the lack of opportunity for women's participation in the drafting process and have highlighted the pressing need to enact legislation that will guarantee gender equality. They have called for the new constitution to enshrine the CEDAW within the national laws of Burma and provide for the creation of a Women's Affairs Ministry to monitor the enforcement and development of women's rights. Their appeals have prompted the NCUB to invite women delegates to take part in amending the existing document to better reflect women's needs.

When the SLORC seized power in 1988, they declared martial law, dissolved the legislature, and suspended the 1974 constitution. On 9 January 1993, the SLORC assembled the National Convention to draft a new constitution. A drafting committee of 702 delegates, only 99 of them elected representatives of the NLD and ethnic groups, was chosen to oversee the drafting of a new constitution.² According to the Lawyers Committee for Human Rights, to their knowledge, no women have been involved as delegates in the constitution drafting process.³

Although the SLORC announced that its plan was to guarantee the political and cultural rights of the people as well as to create a “genuine multi-party democracy,” it soon became apparent that their aim was to give the military a “leading role” in national and political life. To this end, the constitution as proposed allows the military to run their own system of administration parallel to any civilian government and ensures that at least 25% of seats will be given to military appointees. Two days after the Convention first opened, it adjourned, the first of many times to come.

As of 2001, drafting is still not complete, and the committee has met infrequently since 1997. The sections of the constitution that have been published in the state-controlled national daily newspaper *Myanmar Alin* relate primarily to electoral law and the eligibility of candidates to hold public office in the assembly, parliament or as heads of state. These articles delineate that any candidates for the highest offices of state should be knowledgeable in military affairs, effectively eliminating many women from contesting the positions.

No articles enumerating guarantees of rights for citizens or those residing in the country have yet been released. Those articles of the constitution which have been released to date do not make clear how laws can be written and passed, and where the power to initiate laws, previously vested in the parliament, resides. As is presently the case, the new judiciary will be appointed by the President, thus there will be no separation of legislative and judicial powers. It is impossible to say how the future constitution will promote women’s human rights, whether discrimination on the basis of gender will be recognized in the constitution, if women will participate in the promulgation of law, or how women will be

COMMITTEE REPRESENTING THE PEOPLE’S PARLIAMENT (CRPP)

In mid 1998, renewed calls by the NLD for recognition of the 1990 election results were ignored by the SPDC. The NLD communicated to the state authorities that its demand to reconvene parliament was to be met by 21 August. This date passed unheeded by the junta. In response, on 16 September 1998 the NLD formed the 10-member Committee Representing the People’s Parliament (CRPP), with the approval of its entire body of elected members of parliament (MPs). The committee’s formation was intended as a means of reminding the regime and the world that the results of the 1990 elections are still valid. The CRPP is led by NLD chairman U Aung Shwe and with the backing of the NLD MPs, it annulled all laws promulgated by the SPDC since 18 September 1988, and called for the release of all political prisoners. The SPDC immediately responded by arresting 110 NLD MPs and officials, including the octogenarian CRPP speaker Saw Mra Aung, who represented the elected MPs from ethnic parties affiliated with the NLD. As a pre-condition for talks with the opposition, the SPDC insisted on the dissolution of the CRPP.

able to make their voices heard regarding their own interpretations of their rights.

How flexible or rigid the constitution will be also remains to be seen. The absence of women in the constitutional drafting process implies that women’s issues, if not dealt with now, will be a necessary addition after the process is complete. The ease, therefore, by which the constitution may be amended will undoubtedly have long term effects.

Laws & Orders

The military government pre-empts all actions that might affect their stability by frequently promulgating orders. CINT 84

The SLORC invoked martial law, overruling civilian law, when it took power in 1988, under the pretext of protecting the country from internal disturbance or external attack. Martial law was revoked in 1992,

however the SLORC's successor regime, the SPDC, has continued the practice of issuing orders, with the main aim of legitimizing its own authority and proscribing the activities of Burma's people. With the parliament and its ordinary legislative functions suspended, participation in the creation of law is restricted to members of the military council. There is no apparent women's participation, since there are no women members on the council. The military regime has paid little heed to norms of international human rights and humanitarian law that guarantee the freedoms of the individual.

Military decrees of the ruling SPDC, Burmese customary law (**see below**) and the amorphous provisions of Burmese statutory law (i.e. those written laws passed within the State prior to the advent of the SLORC administration) currently form the basis of rulings within the Burmese judiciary. Holdings by judges form precedents for future cases and combine with those precedents set by judges prior to martial law, even from British colonial rule, which have yet to be overruled. Summarized case rulings and newly promulgated decrees and orders are regularly distributed to members of the Bar Association. In this way, decisions on new cases potentially have bearing both on subsequent trials and on the interpretation of the law itself. As the judiciary is still not independent from the military authorities, opportunities for free and fair trials for defendants have been severely curtailed. There is no assurance that due process with its various implications is maintained in adjudication of individual cases. Furthermore, corruption in the judiciary is reportedly widespread. Courts have thus become instruments through which the SPDC can monitor and control the evolution of Burmese law.

Some of the most widely invoked laws, not surprisingly, are the most vaguely worded. As they do not discriminate on the basis of sex, they have been used as a pretext for incarcerating both men and women. The 1950 Emergency Provisions Act (*used in the case of Khin Khin Leh; see Political Prisoners, below*) advocates up to seven years imprisonment for any person who "infringes upon the integrity, health, conduct and respect of State military organizations and government employees, spreads false news about the government or disrupts the morality or behaviour of a group of people." The 1975 Law to Safeguard the State against the Dangers of those desiring to cause Subversive Acts (Emergency Provisions Act), Section

ATTORNEY GENERAL LAW 2001

In February 2000, the SPDC promulgated Attorney General Law 2001, repealing the law it enacted when it seized power in 1988. The seven chapters of the new law include appointment of the attorney general and the deputy attorney general, duties and powers of the attorney general, formation of the attorney general's office and the law offices in different levels, and functions and duties of the law officers. The attorney general's duties include providing legal advice to the government when required, and representing the state as a prosecutor in criminal cases and as a defendant in civil suits where the government is a party. The attorney general is also entrusted with the power to draft and translate laws, advise the government on international conventions and agreements of all kinds, including those dealing with bi-lateral relations and trade.⁵

7, authorizes the Council of Ministers to "pass an order as may be necessary, restricting any fundamental right of a person if there is reason to believe that any citizen has committed or is about to commit any act which infringes upon the sovereignty and security of the State or public peace and tranquility." This law was used to detain Daw Aung San Suu Kyi under house arrest between 1989 and 1995 (*see Women's Participation in Politics*) under the stipulations of Sections 13 and 14 that permit imposing restraint "for a period not exceeding one year at a time up to a total of five years." In addition, laws including the 1957 Unlawful Associations Act, the 1991 Law Amending the Law Safeguarding the State from the Danger of Destructionist Elements (Law No. 11/91) and the 1990 Order Relating to the Right to Assemble and Campaign (Order No. 3/90), have served to restrict rather than promote the rights and freedoms of Burmese citizens generally.

Customary Law

Perhaps the most widely recognized form of law is Burmese Buddhist customary law or the *Dhammathats*.⁴ The scattered texts of the *Dhammathats*, attributed to the Hindu Code of Manu, were authoritatively compiled and rendered (sometimes inaccurately) into English in the nineteenth

century. Although in principle their influence extends only to Burmese Buddhists, who comprise approximately 80 to 90 percent of the population, many non-Buddhist ethnic groups employ the interpretations of the *Dhammathats* as well as their own customary and religious laws, which are not always codified. Customary law is recognized by the courts and is applied in matters concerning marriage, divorce, property succession, and adoption, commonly referred to as family law. Where civil courts are not called upon, customary law is administered by male village and quarter (neighborhood) heads and councils of elders. In such circumstances however, application of the law is arbitrary, as it depends heavily on personal interpretation.

Statutory law sometimes contradicts customary law, but the hierarchy and relationship between the two is not clear. While written acts account for the administration of other legal situations, in most Buddhist and many non-Buddhist communities, the *Dhammathats* still hold sway. The law, as it relates to some of the situations most consequential for women, is neither universal nor uniformly practiced. In both customary and statutory law, provisions for the treatment of women are based on interpretations of women's social roles, especially as wives, and applied by men.

International Law

The Government of Myanmar should take early steps to amend all existing laws, orders, or decrees in order to ensure that its international obligations with regard to the rights of women are effectively implemented, including by the adoption of administrative and other measures as well as the allocation of sufficient funds. In addition, in the drafting of a new constitution, steps should be taken to ensure that the rights of women with regard to equality and non-discrimination are guaranteed by the enactment of basic provisions.

- United Nations General Assembly Resolution No. 97 on Burma, adopted in 1999

In addition to ratifying CEDAW, Burma is a state party to the UN Charter and is bound to promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."⁶ The hierarchy of domestic to international law in Burma under the current regime is unknown. Under the 1947 constitution, most international law was not recognized, as it was required that recognized laws predate

the constitution or be promulgated domestically.⁷ Although the SPDC's ratification of the CEDAW entered into force on 21 August 1997, to date it is unknown how domestic laws have been amended to accord with the stated provisions of the Convention. The SLORC has reserved Article 29, allowing that states can refer disputes to the International Court of Justice, thereby protecting themselves from prosecution under International Law.

Myanmar feels that it is not necessary to refer the dispute to the International Court of Justice.⁸

Since Burma ratified CEDAW, the United Nations General Assembly have adopted an Optional Protocol to the Convention and called on all states that have signed the Convention to become party to the Protocol. Through ratifying the Optional Protocol, the state would provide an avenue for victims of discrimination to submit complaints directly to the Committee on the Elimination of Discrimination Against Women if all internal attempts to redress the situation had failed. As yet Burma has given no indication of intent to ratify the Protocol.

Nationality & Citizenship Law

Have you guaranteed all women members of different ethnic groups that they can have the same rights?

- CEDAW Committee member Ivanka Corti

Since Nationality is the basis for claiming legal rights, evidence of nationality for Burmese women is fundamental in upholding their legal rights. Under the previous 1947 and 1974 constitutions, which did contain guarantees of women's rights, individual rights were accorded specifically to citizens of the State as opposed to all persons residing in the territory. Under the current bi-level citizenship law, Burma accords nationality to members of the 135 recognized minority groups born in Burma, as well as to naturalized citizens recognized before 1982, and children born in Burma, when at least one parent is a citizen.

Full citizens, if married to associate or naturalized citizens, pass on their citizenship to their children. Children born of two associate citizens presumably receive associate citizenship, but this is not specified in the law. Full citizens can only have their citizenship revoked if they leave the country permanently or acquire another country's citizenship,

whereas associate and naturalized citizenship can be withdrawn if the person is convicted of a crime with one-year imprisonment or is guilty of showing disloyalty to the State. The government also issues Foreigner Registration Cards to stateless persons and persons who are citizens of other countries and residing in Burma, and holders are obliged to obtain permission prior to any trip outside their habitual place of residence.

Identity Cards

An instant method of identifying those granted citizenship, and thus afforded protection under the law, is by means of national registration cards. All citizens are eligible for national registration cards, commonly known as identification or identity cards, which are issued at the age of 12. Identification cards should be carried at all times and must be presented to vote, purchase bus, train, and flight tickets, and travel, particularly across police and military checkpoints. The card bears the person's name, picture, place and date of birth, parents' names, and ethnicity. Cards are replaced at age 18, and regularly thereafter. Officials are supposed to verify cards against household registration regularly as well. They are coded by color: pink for full citizens, blue for associate citizens, and green for naturalized citizens. This system of instant identification paves the way for discrimination against those who are not full citizens. Women who do not hold identity cards, as is common in some non-Burman ethnic rural areas, Rohingya women who are denied ordinary cards, and women from cease-fire groups, whose cards bear special stamps, are all at risk of being denied fair treatment because of their status. *(For further discussion of Identity Cards, see Migration & Trafficking of Women & Girls.)*

Passports

The government has placed limitations on access to passports, thereby restricting the fundamental rights of freedom of movement to which Burmese women are entitled. Burmese law provides basically for three types of passports: a work passport that allows the bearer to work in another country if they agree to remit taxes back; a visit passport that allows bearers to travel and students to study overseas; and dependent passport that allows travellers to visit relatives living overseas who are registered as Burmese taxpayers and remit taxes through the Burmese Em-

bassy in their country of residence. With certain kinds of short-term business passports, bearers are also entitled to attend work-related and academic conferences. All passport applications require overseas support letters.

In recent years, Burmese passports are increasingly difficult to obtain. Since May 1996, women under 30 have not been able to apply for work passports, and passports allowing overseas study are only issued if the applicant is officially sponsored by the government to study. *(For further discussion of passport regulations, see Migration & Trafficking of Women & Girls.)*

LAWS RELATING SPECIFICALLY TO WOMEN

What is the way in which this de jure equality impacts on the vulnerable sectors of the population, who may be women exposed to violence?

- CEDAW Committee member Savitri Goonesekere

Many of the laws that relate specifically to women are outdated and sometimes explicitly discriminatory, not only tolerating gender discrimination, but arising out of it. Some treat women as fundamentally different from men, rather than recognizing that because of social roles, they have different gender-based experiences. Some prescribe socially appropriate behaviour for women. Others make justice provisional, penalizing offenses against women on the basis of conditions, such as their marital status. They do not accord women equal individual rights with men for independent action and judgement on issues which concern them, or for redress of injustice.

Sexual And Domestic Violence *(See also Violence Against Women)*

The current Penal Code in Burma dates from 1860 British colonial rule, and as such, it does not adequately define crimes of sexual violence as violations of a woman's bodily and mental integrity. As an indication of the Code's obsolescence, its provisions under Section 376 concerning rape still advocate "transportation for life" for convicted offenders, a reference to colonial times when criminals were sent to penal colonies, obviously not a viable sentence today. The Burmese government, in their report to the CEDAW Committee make direct reference to this penalty, evidence that the law has not changed, and very likely, that it is rarely used.⁹

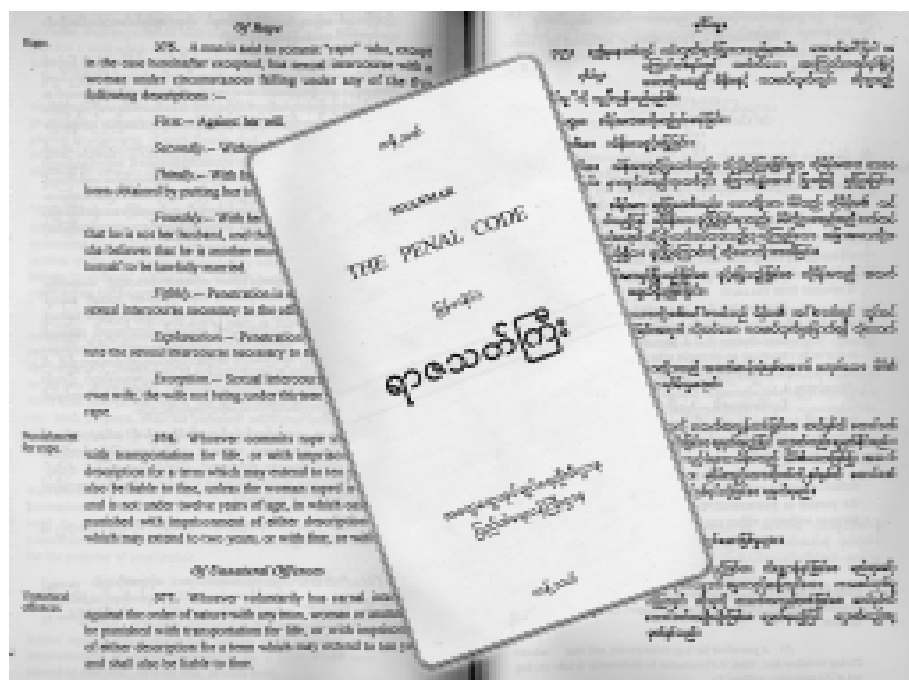
The terms in the Penal Code used to describe both rape and sexual assault are scant and ill-defined, implying that their interpretation is open to the judgements of those applying the law, who are usually men. Because of this, the laws do not provide women adequate recourse for many of the common forms of violence that they experience in Burma. They actively dissuade victims from accessing the law, by causing shame and calling into question women's chastity and behaviour. Moreover, as noted previously (*See Violence Against Women*), the laws that do exist are not applied against perpetrators in practice.

Examination of the wording in various sections of

norms regarding women's behaviour. Rulings on harassment therefore rely on presiding magistrate's interpretations, and may refer to a woman's personal history or deportment.

Sections 375 and 376 criminalize rape with a maximum sentence of transportation for life or 10 years imprisonment, with the possibility of additional fines. Rape is said to occur when a man has sexual intercourse (defined as "penetration") with a woman against her will, without her consent, with consent obtained through fear of death or injury, or with consent, when the woman is led to believe she is lawfully married to the man. Consent achieved

through other means (for example, threats that a woman may lose her job, enticements that she may only get something she seeks in exchange for sex, or qualifications including offers of protection) is not explicitly recognized in the law. Since rape is only charged in cases of penetration, the interpretation of all other kinds of sexual assault are also left to the judgement of magistrates, and presumably carry a maximum sentence of two years. Furthermore, whether a woman is married or single may have bearing



the Penal Code shows that the legal perception includes evaluation of a woman's social behaviour and status in the judgement of crimes committed against them. The Penal Code delineates what constitutes assault, use of force, and rape. All assault charges carry a maximum sentence of two years under Sections 349 to 353. Criminal force is taken to consist of use or threat of physically aggressive action; it does not necessarily include other kinds of coercion, (for example, the use of position or authority). Section 354 defines and penalizes assault or use of criminal force on a woman with "intent to outrage her modesty." It does not define modesty, however the use of this word carries strong implications of expectations or

upon the sentence.

Marital rape is not a crime in Burma, as a wife's consent to engage in sex is not required. Given that society and taboo in Burma prevent any discussion of marital rape, accurate statistics are impossible to obtain. However, the frequency with which arranged marriages and forced marriages, including to soldiers, occur is likely only increase the incidence of marital rape in society. Concerning marital rape, the only provisions laid out in the Penal Code (Section 376) define the act of rape within marriage by the wife's age. While sex with a girl younger than 12 is automatically considered rape, if she is the man's wife and not younger than 13, the maximum penalty is two years imprison-

ment and possibly fines as well. If a woman is over 13 and married, she has no recourse to the law in the case of rape by her husband.

There are no statutory laws relating specifically to any kind of domestic violence, so presumably abuses within the family must be tried as cases of assault. There are also no specific provisions relating to incest. Cases of abuse in the home are rarely heard in courts, because the community and authorities consider them to be personal matters, in which external intervention is inappropriate. The *Dhammathats* make reference to the traditional belief that wife-abuse, if not excessive, is acceptable.

The *Dhammathats* recognize the husband's power of moderate chastisement with a light cane or split bamboo. Even in the early days of the British period, it was thought that striking a wife only once or pulling a wife by her hair and abusing her was not sufficient ground for divorce. But the Courts in Burma no longer recognize the husband's power of chastisement. Physical assault by the husband on his wife is now considered to be a *matrimonial fault*.¹⁰ (emphasis added).

The provisions for trying crimes of violence against women are not adequate for the majority of actual cases. Even under the existing codes, it is not known how often offenders committing acts of sexual violence are prosecuted. There is every indication that few cases of sexual abuse are ever brought for legal settlement, and that perpetrators who are charged usually pay negligible amounts of monetary compensation instead of serving prison terms.

Protection Over Equality

Acts written to address situations specific to women's experience treat women as weak and in need of protection or incapable of making their own decisions, including about their own bodies. A number of the laws promulgated specifically for women emphasize women's need for protection. They include acts commonly cited by the authorities in publications affirming the equality of women under the law: the 1954 Buddhist Women's Special Marriage and Inheritance Act, the 1949 Suppression of Prostitution Act (amended in 1998), and the Nursing and Midwifery Law. These laws aim to protect women from those trying to injure or take advantage of them in specific situations — foreigners who may not respect Burmese

women's property rights or acknowledge legitimate marriage to them; traffickers who coerce women into forced prostitution; nurses and midwives who, through their negligence or incompetence, endanger the lives of pregnant women or their children.

However, these acts do not affirm women's rights to equitable treatment under the law, and they also limit women's rights to make choices about their own lives. Under the Special Marriage Act, when a Burmese Buddhist woman marries a non-Buddhist man, property possession in marriage and divorce is to be decided according to Buddhist law. While at the time the law was written it was assumed that this favoured women, this is not necessarily so. The Prostitution Act prohibits forced sexual labour, but it also bars women from engaging in consensual sex work, even though this is one of the only employment options open to many women today. The Nursing and Midwifery Law criminalizes the unlicensed practice of midwifery, making it technically illegal for traditional birth attendants to provide reproductive health care and for women to use their services.

Protectionist laws also hinder women's abilities to limit the number of children they have. Under Sections 313 to 316 of the Penal Code, abortion is illegal unless it is done to save the mother's life, even in cases of rape. Both a woman attempting to induce abortion and anyone assisting her are liable to three years' imprisonment, or a fine or both. Sterilization without approval of the Medical Board is also illegal for the woman and any other persons who assist her, and punishable under Section 312 with three years' imprisonment or a fine, or both. The approval procedure for sterilization requires that a woman must have the signed consent of both her husband and her doctor on her application form. The extent to which abortion and sterilization laws are implemented to punish women or medical practitioners transgressing them depends very much on attitudes of local authorities. However, the high degree of secrecy with which abortions continue to be conducted indicates that both women and medical practitioners fear being charged. These laws limiting women's control of their fertility assume that women are not capable of exercising informed judgement in matters relating to their own bodies, and must be restrained from independent action.

WOMEN IN THE JUDICIARY

The 1995 National Report on Women showed an increase in the number of women judges, from 391 in 1989 to 410 in 1994, and lawyers, from 728 to 952 in the same period. However, since the total numbers of judges and lawyers in the country are not given, the ratio of women to men remains unknown. It is also not known how many women are higher court judges. Further, it cannot be assumed that all women administering the law are necessarily gender-sensitive. Since law is by its very nature a conservative field, perhaps even more so in Burma, where under current conditions legal evolution is difficult, in fact the opposite is likely to be true.

since relatively few cases are brought before the courts, it is difficult to determine the accuracy of this statement. Civil law includes cases involving marriage, divorce, inheritance, and property rights, however all of these are currently governed by customary law in Burma. The paucity of civil cases in Burma hinders the evolution of the law and offers less opportunity to challenge and overrule longstanding precedents, which may bear no relation to modern society.

Recourse To The Law

In reality, there is little recourse to the formal legal system in Burma. As there is little evidence that the law is operational, most people have no experience using the law to resolve disputes and a very low level of legal literacy, preferring to avoid all authorities. This is especially true in rural areas, since officials and soldiers regularly contravene the law with impunity.

THE PRACTICE OF THE LAW

One of the great casualties (of political instability, economic mismanagement, military intervention and raging ethnic tensions) has been the rule of law which, although widely quoted by the government, has all but ceased to exist in Burma.¹¹

Cases in Burma are divided into criminal and civil law. Criminal cases are tried as offenses against the state. When the cases are heard in court, it is the responsibility of government representatives to prove the defendants guilty. If convicted, offenders are sentenced to pay fines or serve time in prison. Civil cases are disputes between private parties, and settlements usually require one side to pay compensation or reparations to the other for damages inflicted.

With regard to criminal offenses, Burma inherited in theory the British jury system of adjudicating cases; however it has not been practiced since World War II. Rulings are granted by judges based on the evidence presented by counsel in public courts, the applicable provisions of statutory and martial law and previous precedents. Under the law, women in Burma are not eligible to be jurors, indicating that the judicial system does not reflect the women's life experiences. If the jury system is reinstated in Burma, it is hoped that this prohibition will be amended, especially given the dearth of legislation relating to crimes of sexual violence.

As regards civil law, while it is popularly maintained that women have equal status in contractual cases,

Before the troops come to the village, the commanders order the soldiers to steal the chickens, pigs, and other possessions from the villagers.... If you catch the thief with the stolen things and inform the commander then your things will be given back to you. If you can't produce this evidence against the thief, no more action will be taken.... My family lost about 30,000 kyat worth of goods this way, and I was raped by the soldiers. CINT 56

As in many countries, the poor are more disadvantaged in their recourse to the law. Those who cannot understand, speak, read or write Burmese may be further handicapped by their inability to follow court or other proceedings or speak in their own defense. There are no government-funded or supported legal aid societies to provide legal advice or assistance to those who cannot afford it, further decreasing the likelihood that average people will seek legal representation or have adequate access to legal defense. Even when lawyers are consulted, every attempt is made to seek private out of court settlements, often through payment of monetary compensation. Women we spoke with commented on the prevalence of corruption in the legal system and the efficacy of judicious applications of money to oil the wheels of justice.

If you do go to the police station, the person with the most money is the one the police will listen to. They don't care about the right or the wrong of the situation. Only the person who can pay more money will win. CINT 14

There is little encouragement for women to pursue legal avenues, as those who are responsible for upholding and enforcing the law are often the first to use their positions to abuse women's human rights. Women may find they face further violations at the hands of officials, without necessarily obtaining the redress they seek.

My father had saved money [working for the government on construction projects in Shan State]. The other authorities in the area suspected him because of this, and wanted to put him in jail. They told him to pay 30,000 kyat in five months to the police and others. Then they told him, "If you have a daughter, it would be better for you if she sleeps with the number one man for the police in the area." This man was also in charge of the courts. CINT 08

I know one woman who wanted a divorce from her husband. She had to talk to the police, and one policeman made her sleep with him for two nights for the legal papers. CINT 08

In villages and urban centers, most routine disputes are settled without recourse to police or courts, by

male village headmen, elders or quarter leaders. In some communities, religious leaders, for example, Christian church committees applying indigenous customary laws or mullahs following Muslim Shariah laws, are responsible for most judgements. Very little of the law as it is meted out is codified or available to ordinary citizens in its written form, so there are no universal standards to guarantee uniformity in its application. While elders are sometimes known and trusted in the community, they may base their interpretations of justice not only on wisdom and experience, but also personal judgements, sometimes replete with gender bias.

Treatment Of Prisoners

Much international criticism has been leveled at the Burmese government for summary trials and harsh treatment of political prisoners. Several international organizations, including Doctors for Human Rights, Amnesty International and Human Rights Watch Asia have found the use of torture to be common in Burma, including in cases of incarceration. (*See Political Prisoners, below, and Women's Participation in*

AFAN, 31

When I was 22, some friends of my husband's friends (from India) asked me to take them over the border to visit when my husband was away. We over-stayed the 5:30 p.m. limit to return and were arrested at the checkpoint on the way back. One of the three men I was with threw a package of drugs (heroin and some tablets) they had purchased into the border river, but it fell on the rocks. The men were allowed to go free, but I was held and the package was used as evidence in my trial.

I was accused of illegally taking foreigners over the border and of drug trafficking. I hired a lawyer but he didn't want to represent me and in the end I was convicted, even though there was no evidence to substantiate the charges. I thought I might be let free at one point, because the narcotics officer who arrested me told me, "I could release you on bail, or let you go completely." I thought he wanted money from me, but on the day of the trial, he whispered to me that I should stay with him for a month after I left the court. When my sister had visited me, he spoke to her really rudely, using crude and suggestive language, and I was angry. So I told him loudly, "I'm a Christian, don't speak that way to me!" During the trial, he gave testimony that the evidence confiscated was mine, and I was sentenced to 10 years of hard labour.

I was sent to Mandalay, and after six months, to Kyaukse hard labour camp. I met about 100 people in jail who were sentenced on other counts without evidence. Many of them couldn't speak Burmese, including an old woman who was accused of a crime someone else committed. She spoke only Chin and didn't understand the court process so she was also forced to do hard labour. Every day we had to break rocks and do other construction, although 400 of the 1000 prisoners could afford to bribe the guards not to work, so the rest of us had to do more work. We had to buy our equipment, food and water for bathing, so I spent over 3,000 kyat every month. Many people died from malnourishment and illness under the harsh conditions. I was released after six years and nine months when the Deputy Minister of Religious Affairs reduced our sentences. But now my health is so poor I can't farm anymore. I don't know how to do other work, so I don't know how my brothers and sisters and I will survive. CINT 238

Politics for incidents of torture and custodial sexual abuse of political prisoners.) Even non-political prisoners are often convicted without evidence or the benefit of adequate representation. The SPDC has claimed that women prisoners, political and non-political, enjoy the fair treatment due them according to regulations.

Women prisoners are protected by special laws and the Jail Manual. They are entitled to health care and special privileges. Even the hair of the women prisoners must not be cut against her wishes. For female prisoners with hard labour, the workload is assigned according to the physical health status.¹²

However, evidence exists that women accused of crimes may be denied equitable treatment, threatened or sexually exploited by officials simply because they are perceived as women to be vulnerable.

Political Prisoners (*See also Women's Participation in Politics*)

International organizations and governments have routinely condemned the Burmese junta for incarcerating people solely on account of their peaceful exercise of the rights to freedom of assembly, association and expression. Those arrested for activities that threaten state security are often detained without charges. With no independence between the civilian judiciary and the military authorities, human rights groups such as Amnesty International have expressed concern over the access of political prisoners to a fair trial. At present, hearings regularly contravene international standards. Those accused are often denied access to legal representation and have little or no opportunity to speak in their own defense. Judgements are passed under vaguely worded and arbitrarily applied security legislation, and sentences meted out are frequently excessively long and harsh, sometimes transgressing the terms allowed under the law.¹³

To provide only a few among many possible examples of this, elected MP Daw San San, born in 1930, a leader of the NLD women's wing, is currently serving the continuation of a 25-year sentence for "providing false information to foreign media and taking a lead role in anti-government mass rallies." Daw San San was first arrested in April 1991, then released in 1992 and her sentence suspended on the condition she refrain from political activities.

She was rearrested in October 1997 to fulfill the terms of her original sentence after attempting to participate in a township NLD meeting, although it is believed she was imprisoned for conducting an interview with BBC radio critical of the authorities. At least two female students, Ma Yi Yi Htun and Ma Nilar Thein, were arrested after the 1996 demonstrations and given sentences of 14 and 10 years respectively for publicly demanding improvements to the education system and the rights to form a student union.¹⁴

In another well-publicized case, on 19 July 1999, Khin Khin Leh, 33, and her three-year-old daughter, Thaint Wunna Khin, plus six other family members, were detained for political activities when authorities could not locate Khin Khin Leh's husband Kyaw Wunna, a member of the NLD. The child was released on 30 July 1999 but Khin Khin Leh continued to be detained. On 3 December 1999 she was sentenced to life imprisonment under vague provisions of the 1950 Emergency Provisions Act and the 1908 Unlawful Associations Act. Amnesty International has named all those detained persons of concern, expressing fears that they would be tortured or ill-treated. Khin Khin Leh suffers from a lung problem and is believed to be in need of medical treatment. At the time of writing she and the others continue to be incarcerated.

Amnesty International estimates the total number of political prisoners in Burma at approximately 1,850¹⁵. Their May 2000 report on Myanmar, "Unsung Heroines: The Women of Myanmar," lists the names of 61 mostly Burman female political prisoners incarcerated up to that time. The Association to Assist Political Prisoners records another 32 women imprisoned for their political beliefs, again primarily Burman and from urban areas. The number of others undocumented, including women arrested for political activities with ethnic opposition groups, remains unknown. In the course of our research, the women we interviewed made reference to at least seven other female political detainees whose names do not appear on these lists. Of these, one was Burman, two were Chin, and four were Karen or Karenni.

While the International Committee of the Red Cross resumed its presence in May 1999 with a verbal agreement that they would have access to all places of detention in Burma,¹⁶ it is believed

PYAR MAR, 32

They came to my house at night at ten o'clock and they arrested me without guards, they said they there was no need for guards. Then they forced me into a prison cell, interrogated me and beat me. I couldn't sleep for three days. They persecute the people who work in politics. They tried to make me admit to things I hadn't done. Finally I confessed anyway, because they beat me, and when I admitted my guilt they stopped torturing me.

I had a chance to get a lawyer, but they cost anywhere from 10,000 to 50,000 kyat, so most people can't get one. If you call a lawyer it's useless anyway, because the lawyer and the judge are afraid of the military intelligence. The military judges all the cases. The military wrote the judgment and the judge only had to read it. Also, anyone can listen when they examine you in court, but it's not really free because the intelligence stay nearby all the time.

There were about 70 women in Loikaw jail. There were cases of robberies, of perjury, cases related to opium, and 17/1 [political] cases. I was in jail for one year in Loikaw, because I was accused of working with the KNPP. I can remember Nan Nyint Yu Lyire who was also there for political reasons. They sent her in prison for 20 years because she joined the KNPP. There was also Ma Rosy whom they had sent to jail for five years. From Loikaw village, Ma En Mo, Htara Moe and NLD U Soe Na's wife: I saw them all in jail. I don't know what kind of things they did, I know only know they were there under [Order] 17/1, because they joined the KNPP. When they stayed in prison, they were persecuted. [The authorities] beat them with their fists and with sticks. They had to kneel on broken bottles, they turned on the lights on their face and they tortured them. The ones who tortured them were not the police, they were from the Intelligence. A group from the Intelligence entered my cell and covered my face and beat me. I remember the ones who beat me, they were commander Kyaw Kyaw Thu, Kyaw Kyaw Win, U Tun Shine, U Han Nyint, Thet Kine Soe, Thet Nying. They are from intelligence, Infantry Battalion 27. The name of the man in charge of the Intelligence is Major Thut Tart Shwe. I have never seen him.

We women, when we are in prison, have more problems than the men do.... When we were in jail, we had to give bribes to avoid persecution and hard forced labour. If you are poor in prison you suffer hell. I gave 5,000 kyat to the jailers so that I could stay more comfortably. Moreover I had to give 500 kyat to each warden every two months. During the one year I stayed in the jail, I had to pay 80,000 kyat.

Girls who were in Loikaw jail because of prostitution, and those who wanted to get out early, were raped by jailer San Nei. San Nei had a wife. He slept with one girl every night. Sometimes one girl had to sleep with him for four nights. During that time, that girl could stay and eat very well. The girls who slept with San Nei were released after one or two months. Most of the prostitutes did not escape from San Nei's hands. In April [1998], N--- who was 23 years old, was imprisoned for possessing opium. She was given a long sentence, so she paid to have her charge changed to prostitution. When she was in the section of the jail where those convicted of prostitution were kept, San Nei raped her. N--- had to stay with San Nei for one week. She cried a lot and after one week she escaped from jail. When she escaped, she told her boyfriend who worked in the SLORC Intelligence. Now I have heard that San Nei was transferred to Myingyan. The reality is that the government's officials knew what San Nei was doing, but they didn't punish him.

Pregnant women were unlucky, they had to give birth in great discomfort. They were not sent to hospital when they went into labour. Officials forced the women to give birth, unassisted, behind the prison bars. Two prisoners gave birth in jail. One was S---. She was 25 years old and lived near Loikaw. She was convicted of stealing. She gave birth to her baby in April. She went into labour at 11 o'clock at night and the teacher who used to act as a midwife to the prisoners was not allowed to assist her. Even if she had, there was not enough cotton, gauze, scissors, needles, forceps or medicines. They had to sterilize a knife in a flame to cut the umbilical cord, like people living in the Stone Age. S--- gave birth to a daughter. The other one was K---, 27 years old. She lived in S--- village in Loikaw township. She gave birth to her baby in June. She was also a prisoner for two years. Teacher N--- helped her to give birth to her child. CINT 148

that they have not yet been able to access all MI detention centers, government rest-houses and other places of incarceration where prisoners may be held without trial. In September 1999, the ICRC reported that it had seen over 18,000 total prisoners, including 800 political detainees. International organizations continue to express concerns for the health and safety of those still incarcerated. In concert with the ongoing dialogue between Khin Nyunt and Daw Aung San Suu Kyi, nearly 200 political prisoners had been released by late 2001, many of them NLD members. It is hoped that these actions will be extended so that all political prisoners currently being held are released.

WOMEN & FAMILY LAW

The legal proceedings most likely to affect women of all ages and ethnic and socio-economic backgrounds are those surrounding such major life events as marriage and divorce. In Burma, they are governed primarily by customary law, the provisions of which reflect the gender stereotypes that obstruct women's equality in other areas.

Many of the laws and case rulings currently on the books have not been challenged since early in the century, thus preserving the social norms and inherent discrimination of an earlier era in their current application. This has prompted at least one legal expert to argue for the need to revise existing legislation to better reflect the realities of life in the present times and accord greater equality to women.

MARRIAGE & THE SPDC

Two issues concerning the government's involvement in marriage deserve special mention. Women in areas of armed conflict are at risk of being forced to marry locally-stationed soldiers, a practice which many believe is encouraged by the central government as part of a greater policy of Burmanization. (*For more on forced marriage, see Violence Against Women.*) However, at the same time, the government has enacted specific orders prohibiting the marriage of any woman from Burma to a foreigner, ostensibly to combat trafficking of women. (*For more on prohibition of marriage to foreigners, see Migration and Trafficking of Women & Girls.*)

However, in his view, this is unlikely to happen any time soon.

The paucity of "legislative intervention" in matters of family law since Burma's independence in 1948 is highlighted by the fact that there has only been one major legislative enactment. This is the 1954 Burmese Buddhist Women Marriage and Inheritance Special Protection Act, which was essentially promulgated to protect the rights of Burmese Buddhist women who are married to or cohabiting with non-Buddhist men.

Post-1988 Burmese military governments, be they named SLORC (State Law and Order Restoration Council) or SPDC (State Peace and Development Council), have issued or promulgated many laws in the areas of foreign investments and financing, which certainly are high priority areas for the government. However, it is very unlikely that the government would accord marriage reform (i.e., legislative repeal of the polygamous system) even a low priority, despite the fact that proposals for such reforms have been made as early as 1965.¹⁷

The Marriage Contract

In virtually every society, marriage affects a woman's status under the law. The application of a uniform standard for marriage, prescribing a universal minimum age and requiring national registration of marriages, is one of the means advocated by specialists in women's rights law to prevent child marriages and ensure that women's rights in marriage are protected. In Burma, while the Supreme Court has ordered the registration of all marriages, no single standard regulating them exists. Problems relating to inter-ethnic marriage have given rise to a plethora of laws for marriage and divorce, applying to members of different religious groups. These include the 1899 Christian Marriage Act, the Native Convert's Marriage Dissolution Act, the 1874 Married Women's Property Act, the 1872 Special Marriage Act, the 1869 Burma Divorce Act, and the 1954 Buddhist Women's Special Marriage and Inheritance Act. Members of religious groups including Hindus, Parsis, and Muslims also follow their own religious codes for marriage and divorce. As a result, different standards apply depending on one's cultural and religious background. How closely the laws and religious codes are followed depends very much on the community. In urban areas, it is more likely that marriages are registered and official rulings sought in the case that unions end. In rural areas, most marriages continue

DUTIES IN MARRIAGE

Matrimonial responsibilities are codified in the five supposedly symmetrical duties of husbands and wives, also originally from the *Dhammathats*, still learned in the primary school curriculum, and frequently reprinted in government and other publications.

A Husband's duties towards his wife:

1. To pay due regard to one's wife and show courtesy
2. To hand over property to her
3. To remain faithful by avoiding misconduct
4. To provide her with suitable adornment
5. To cherish her

A Wife's duties toward her husband:

1. To perform the house hold duties well
2. To carefully watch over the property in her possession
3. To be faithful and guard her chastity
4. To give equal treatment to the kin of both
5. To be industrious and discharge her duties without sloth

- "Myanmar Women's Day," Myanmar Perspectives, June 1998

to be governed by informal application of customary laws, either the *Dhammathats* or the customary laws of non-Burman ethnic groups. In some areas, opposition insurgent groups have promulgated their own laws regarding marriage and divorce, and these are adhered to locally.

Village headmen and quarter heads are empowered to register marriages, but in many areas there is no written documentation. When weddings are celebrated, the festivities usually include daytime feasts for relatives, friends, and neighbours. Non-Buddhists usually hold specific religious ceremonies. Buddhist couples may also arise early in the day to bring offerings to the monks. However, generally marriage in Burma is seen as a civil union, and Buddhist customary law (the *Dhammathats*) does not require any special ceremony. Marital bonds are cemented by open cohabitation with the object of living as husband and wife, and affirmed by the community's acceptance (in common parlance "seven households to the north, south, east and west") of a couple's

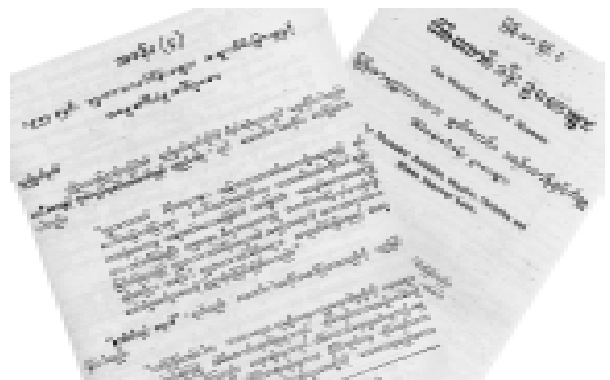
communal relationship and their intent to remain together. More explicitly, a marital relationship is sealed by the couple's consummation of their union.

If a couple likes each other, they just follow the old Burmese saying, "[For the man,] just take off your longyi and hang it on the wooden bar in front of the house [to give public evidence of your relationship]." CINT 282

In most Burman and non-Burman ethnic societies, a couple is required by custom, but not necessarily by law, to gain their parents' consent to their marriage. However, many people still elope in Burma, if their parents do not give their approval. Usually, the parents accept these unions when the couple returns back to the community or word of the elopement reaches the family, in part because it is assumed the couple have had sexual relations. The *Dhammathats*, while affirming a father's role in giving consent to his daughter, caution that if a young woman wants to marry and her parents disagree with her choice of spouse, it may be beneficial to allow the union to take place regardless, "in order to prevent disgrace. If a young woman, without any sense of propriety, visits her lover's house, her parents are scandalized thereby."¹⁸ Young women concur that this thinking persists today.

If the two lovers elope, they automatically become a couple, and since the girl lost her virginity her parents must think carefully and let their daughter get married. CINT 282

In matters outside marriage, majority for both sexes is fixed at 18 years of age, and many people from Burma believe this is the legal marriage age. In fact, the minimum age for marriage falls under customary law and the individual religious marriage acts. According to these acts, the ages of majority for men and women are different. All codified marriage laws, including the *Dhammathats*, specify that women



require their father's consent to marry if they are under 20. In theory, after the age of 20, a woman has the right to choose her husband and does not require parental consent (*however this is not always so; see Social Roles and Gender Stereotypes*). Men can marry without parental consent as long as they are "physically capable" of consummating the relationship, a qualification that is understood to set the minimum age as puberty or the early teens.

With regard to parental consent, only the 1899 Christian Marriage Act and the 1872 Special Marriage Act make reference to the *mother's* consent, and only in the case that the father is dead. More importantly, all marriages require not only parental consent if a woman is underage, but also *her own* consent. Despite this, women from all the communities and ethnic groups we spoke with confirmed that marriages are often arranged or influenced by parents' desires. Couples seen together publicly for more than a few weeks or months are often pressured by families and community members to marry, and daughters usually feel they have no option but to comply with their parents' wishes.

Burmese customary law advocates that women may be ready to marry by the age of 15 or 16;¹⁹ in reality, marriages at ages even younger than this may occur. The women we spoke with, particularly Rohingya and other Muslim women, Karen of various religions, Karenni, Chin, and Shan women, also indicated that in rural areas, it continues to be common for women to marry between the ages of 14 and 17.

Nowadays, women get married between 16 and 17 years of age. Most of my friends are married already. CINT 195

1st woman: According to the law, the minimum age for marriage is 18. But generally girls get married before they reach 18. After 20, it is too late to find a husband.

2nd woman: There is usually no official document. The church will provide a marriage certificate. As long as the parents agree, the church will marry the couple whatever their age. CINT 169

Although some women say that the traditional ideas encouraging women to marry young have begun to change, especially in urban communities, at the same time, deteriorating socio-economic conditions have in other areas fostered the trend towards early marriage, and sometimes, early divorce as well.

MARRIAGE & THE PENAL CODE

Sections 493 to 498 of the (British) Penal Code rule on offences relating to marriage and deceit in the enactment of marital contracts. Under Section 493, a man is liable for deceiving a woman that she is legally married to him with the intent of having sexual intercourse. Section 496 criminalizes marriage with fraudulent intent. Section 497 criminalizes adultery as sex by a man with another man's wife, if the husband does not give his approval. Section 498 criminalizes enticing, taking away, or detaining a married woman with criminal intent or intent of illicit intercourse. It is unknown the extent to which this legislation is actually employed in practice.

Especially nowadays, with the universities closed, so many young people have nothing to do. So they marry too soon and divorce soon. CINT 161

So many young women travel to other areas to work. When they live on construction sites or at factories, all the workers sleep in the same place and they have no protection. So sometimes they take a husband just to keep the others from bothering them. They are very young but they marry just so they are not alone. And then often they have problems, because they may not know their husbands well first and later they find out the man is a drinker, or takes drugs or gambles, or has a bad temper and beats them. And often they divorce after a short time, and when they return home they have nothing. CINT 243

Divorce

Men can leave their wives and children very easily just by going. Women don't leave their husbands. There is nowhere for them to go. CINT 12

It has often been said that marriages in Burma are ended as easily as they are made, by mutual consent, and that Burmese divorce laws are among the fairest in Asia. Ideally, when a woman and man mutually agree to separate, they approach local officials and declare their intent. Property brought into the marriage is reclaimed and jointly acquired property is evenly divided. Sometimes, divorces are contested and more complicated, theoretically requiring the

partner wishing to end the marriage to pay compensation in some form to the other. The *Dhammathats* and the various acts for specific religions give the usual grounds for divorce, and furnish the basis for property division. All these written laws grant men and women the right to divorce for different reasons and all discriminate against women in affording property settlement. Further, as in the case of marriage, what the laws say and the way that they are actually practiced vary considerably.

Dissolution of the Marriage Contract

Although separation is common in some areas, most of the “divorced” women we spoke with had never formally parted with their husbands or signed any document indicating dissolution of their marriages. In a number of cases, women divorced after they received letters from absent husbands asking that their marriage be dissolved, and a few agreed to register their divorces with the village heads. Anecdotal evidence suggests that this happens among all ethnic groups. In the majority of cases, it was the husband and not the wife who initiated the separation, often with no legal proceedings, by announcing verbally or in writing his intention to end the relationship, or the fact that he had taken up residence, and sometimes had children with, another woman.

My husband didn't come and see the village leader, he just sent a letter and tried to get a certificate recognizing our divorce from far away. CINT 41

Now most men leave for work in other areas and send money back to their families. Women stay here and grow vegetables and crops for their families' survival. Living apart has created a lot of suspicion between couples, and many women received divorce letters from their husbands. Under Chin culture, if your husband has doubts about you and writes you a divorce letter, you must leave everything and leave the house. But the husband can still enjoy himself with a new wife while he's away. Many men have fallen in love with and remarried when they are working in other places, and just written to their former wives to divorce them. CINT 199

I separated from my husband because he got a new family while we were married. CINT 15

Realities of Divorce

Traditional texts claim that divorces occur frequently

in Burma and are not incidents of major legal or social consequence. Some women concurred, and said that the incidence of divorce was high, especially among younger couples.

These days, so many people marry early especially in the villages. 15, 16, 17, by the time you're 18 if you're not married, it's almost too late! But what do these kids know when they marry? Nothing, they know nothing about life or relationships. They also don't know how to take care of children. If they are fighting a lot and not getting along, and they don't have children, sometimes they divorce. Then they can remarry if they want to. If they have children, it's more difficult. But if they do divorce then it's more likely the woman will try to remarry, because she needs someone to look after the children. This kind of thing happens a lot. CINT 293

In divorce, we [Arakanese women] have equal rights. The village headman arranges for a divorce. Husband and wife will each have half of the properties according to our customs. If they were married and always fought each other, they can divorce legally. CINT 106

In Karenni [animist] tradition, the person who wants to leave has to pay compensation to the other person. Some couples agree mutually and divide the properties in half. CINT 233

It was also suggested that divorce is becoming more common in urban areas, but that this was a recent phenomenon, occurring in concert with other social changes.

In my circle [in an affluent part of Rangoon], it doesn't make any difference. People get divorced because of their situation. That's about it. But before, during our parents' time, people didn't like it. Now people don't pay much attention to divorce. They'll get a divorce if they don't get along. That's all. Also, nowadays in the cities, people are living together [without being married]. CINT 93

However, according to most of the women we spoke with, common or not, divorce is still perceived to be a relatively infrequent occurrence in most communities. On the whole, very few of the women interviewed said that divorces were easily obtained in Burma. Even those who said there are few legal encumbrances commented that women may face other practical or social strictures.

In divorce, the couple just leave each other and go back to their parents. In our [Chin] tradition, these things are quite free. But of course, the man has more opportunity to sepa-

rate than a woman. Most women depend on their husbands and children, and think more before demanding a divorce. CINT 169

If you want to get divorced then you just do it; you don't have to go to the district office because we [Shan] don't register our marriages officially. Property is split in half but if the woman wants to have a new partner it's very difficult. She must wait for one to two years or else people will gossip that she has only just split up with one partner and now has another. But if a man splits up with his wife today and gets married again tomorrow no one will dare to say a thing. CINT 149

Divorce in many areas is regarded as unnatural, unacceptable for religious and cultural reasons, and deserving of strong social censure. It is widely discouraged, by family relations, by the community and by lawgivers. Women are traditionally entrusted with the marital relationship, and are held responsible for ensuring it is happy. When marriages dissolve, they are often blamed, and bear the shame of not being able to “manage their households” to the satisfaction of their partners and communities.

In our society, if a couple divorces, people usually blame the woman. Even if they have no idea what happened in that relationship. Maybe the man seems very nice when he is in other situations, but we can't know what happens when he is inside his home. Maybe he is different. People should know what has happened before they make these judgments. CINT 161

Among some ethnic groups, the concept of divorce is completely culturally unacceptable, and this is reflected in their customary or religious laws.

In an Akha village, if a husband and wife have a baby, they cannot end their marriage. Then the woman has to stay. After a few years, if she wants to finish the marriage, she has to leave the village. If she stays, then she is still his wife. CINT 08

In Karen society we don't really have divorce – this is the same for the Christians and Buddhists. If the husband is abusive, the woman can leave, but it is very difficult. People will not treat you the same, you can notice a slight change in the way people treat you. We have very strong laws against adultery. [In territory controlled by the KNU] people who commit adultery used to face the death penalty, but this law was changed in 1981-2, and now they face 10 or 12 years in jail. I didn't want my husband to go to jail, so I couldn't talk about it. My friends said to me that if it hadn't been for me he would

have got the death sentence, but he didn't because the leaders didn't want to hurt me more than I was already. CINT 15

In Karen culture, we can only have one husband and one wife. Those of us who are Christians promise we will be true until death. We can't just divorce because we are bored with each other. CINT 75

In Kachin society, remarriage is difficult because of the clan differences. Happy or not, you have to be with him. Even if the man has a minor wife, the first wife has to stay on with the children. If the husband leaves his wife and children, a woman can still only remarry if the man announces that from this day on they are going their separate ways. We have to meet and discuss with the relatives as well. CINT 110

[Kachin] Christians are not allowed to divorce. Only if it is the sin of adultery. If a woman commits adultery, the man can divorce her. But without adultery, they can't. And there is no law for men about adultery. For women it's a sin, but for men it's open. Which is wrong and which is right? CINT 120

In Catholic [Karenni] communities, the priests don't usually allow people to divorce. CINT 233

Our [Arakanese Buddhist] community believes we have one husband, one wife, for a lifetime! CINT 175

In fact, there is very little evidence that divorce by mutual agreement occurs. Obtaining a legally recognized divorce requires providing grounds recognized as sufficient by authorities such as village and quarter heads and elders, and as such, the decisions are subject to personal rulings as well as legal guidelines. If women's attempts to separate from their partners are not recognized by local authorities, they carry no weight in their communities.

Normally the leader of the village tries to negotiate for the couple. Even though they separate, they are taken to their parents' home and the leaders negotiate weekly or monthly until they get reunited. CINT 41

My parents divorced by themselves. They went to discuss their divorce with the village elders, but the elders did not agree and told them, “You have a lot of children and you don't need to divorce.” My father went to live on his plot of land and my mother went to live in another place. I went to live with my eldest sister. CINT 280

I have to say women don't have the right to divorce because when I wanted to divorce my husband, nobody agreed. Ev-

everyone forced me to stay with my husband. CINT 75

In our village, we can't access a court because we are so far from the city. So if people want to divorce, they have to go to the village elders' houses. But I saw that people usually divorce for not more than six months, then they get back together again. Normally the village headman orders the couple to reconsider after six months. Even though the man is physically abusive to his wife, the headman made decisions like that. In that case, if the woman wants to leave and marry another man, she won't be allowed. CINT 285

My mother tried and I also tried to help her, to get a legal divorce, but the police did not let her. They said the abuse she suffered when my father beat her was very normal. If you have money, you can pay the police and you'll get what you want. My father did not want to divorce my mother, so he told the police. I am 100% sure the police listened to my father and did not allow the divorce. CINT 09

I've heard of divorce cases, but never heard of a woman winning. In the case of domestic violence, women may or may not go to court. But mostly they don't because they don't want rumors to spread. CINT 61

Adultery

The *Dhammathats* give unequal weight to adultery by men and women as a reason for divorce. In the case of proven adultery by the wife, a husband can claim uncontested divorce. The woman forfeits her claims to any joint property.²⁰ However, adultery by husbands is only grounds for divorce if it is accompanied by cruelty, desertion, rape, sodomy, brutality, or, as polygamy is legal, taking another wife without permission of the first. (Since marital rape is not referred to elsewhere, "rape" in this context presumably refers to the husband raping a woman who is not his wife.) Cruelty is defined in the *Dhammathats* as a husband's taking obvious pleasure in abusing his wife, without regard for the physical or emotional suffering inflicted on the woman.

An isolated incidence of violence or ill-treatment is not sufficient; there must be physical violence or infliction of mental pain, with indifference to, or delight in, the pain caused to the sufferer.²¹

The difficulty in proving such an allegation is likely to hinder women's attempts to use it as grounds for divorce. Brutality is not defined. Desertion can only be proven after a period of three years has elapsed.

With the problems that surround substantiation of these charges, effectively men do not need to divorce if they wish to be unfaithful. According to writer Mi Mi Khaing,

A woman is seen as having stronger physiological links to the family... Adultery on her part would have to mean an involvement of her emotions toward a new base, whereas for the potential 'bachelor' adultery does not necessarily mean the desire to change.²²

These differences not only weaken a woman's chances of obtaining a divorce, they bolster the ideas that women's status generally in the marital relationship is secondary to men's, and that women should naturally assume more responsibility for their families than their husbands. Women's subservience to their husbands is further underlined by another reason that husbands may divorce their wives.

Dhammathats allow a man to divorce his wife when she is like an enemy or like a master because such a wife makes the husband's life miserable.²³

There are no similar provisions for women, which would seem to imply that it is considered normal for a man to behave "like a master" to his wife, and that a woman's happiness in her marriage is not at issue.

Polygamy

According to all marriage laws, a woman entering into marriage is required to be single; however men may still practice polygamy under customary law. Polygamy is legal²⁴ and is not considered to be adultery, though it has become relatively uncommon, except in Muslim communities. The husband's taking another wife without the consent of the first wife may only give her grounds for divorce under certain circumstances. The *Dhammathats* say that if the wife is thought to be infertile – "that is, if she does not conceive after eight years" – or bears only daughters, the husband may take another wife without her consent. Putting aside the assumption these judgments make that infertility always originates with the woman, these provisions obviously imply that her position in marriage is secondary to her husband's and that her main function is to bear children, among whom, sons take priority over daughters. Men are also given good cause for taking another wife if a woman is afflicted with leprosy or a simi-

POLYGAMY IN MUSLIM COMMUNITIES

Under Muslim law, men are allowed to have as many as four wives, provided the first wife approves subsequent marriages and that the man is able to provide adequately for all of the family. While this practice continues in Muslim communities in Burma, particularly among Rohingyas, women are often unhappy with it.

In my village, many men take two or three wives. Women do not agree but they cannot do anything. I married when I was 14. I fled to Bangladesh in 1992 together with my husband. We stayed in Gundhum camp for over a year. Then my husband went back to Maungdaw and took another wife. I decided to divorce him when he married a second wife. I could not stay with him and another wife. He called me to return to Maungdaw, and take clearance [for repatriation]. He told me that he would take care of me. But I decided not to return. If I ever have to go back to Maungdaw, I will stay at my father's house. CINT 186

I was the first wife. I was about 14 or 15 years old at the time I married [at my first menstruation]. I got pregnant two years later. He had three wives. We all lived together in the same house. When he married the second time, he asked me if I agreed. I told him that I did agree. Same for the third time. I felt it was wrong, but I was afraid to oppose him. After he died [portering], one of his wives went to Saudi Arabia with her uncle. She had one child. The other wife had three children and lived with me at my parents-in-law. CINT 187

A 15-year old Rohingya girl interviewed in one of the camps commented,

I would like to get married, but later. If I marry now, I will have too many children. I am not very strong, and my husband will probably choose another wife. After a woman has many children, she is no longer attractive for her husband. I would not like my husband to marry another woman. CINT 188

lar disease, or engages in "immodest conduct,"²⁵ although this term is not further defined. Polyandry (women having more than one husband) is not permitted, though, and women are not provided with similar grounds for divorce. The loose interpretation of polygamy under custom-

ary law allows men to engage in new relationships without formally breaking the ties of their first, as the cases of divorce included here later make more clear.

Apart from Muslims, few ethno-religious groups officially follow the practice of polygamy in Burma. However, some women complained that men still take "minor wives," for example, among the Jingpaw in Kachin State. While this is frowned upon by the community and the Christian church, the practice is justified on the basis of the group's low population, and as a vestige of the clan system.

According to the KIO law, you cannot have more than one wife. But some KIO officers secretly have more than one wife. If a wife and husband have no children to carry on the family name, they can discuss between themselves to bring in another woman. There are still a lot of high-ranking officers who secretly have minor wives or have affairs with other ladies. They do this not because his wife didn't produce a son for him. The wife behaves well and everything is fine, but they still do this kind of thing. My husband is a high-ranking officer. The wives of the men under him often go to my husband and complain about the situation and ask him to intervene on their behalf. CINT 111

Marital Property and Alimony

Customary law under the *Dhammathats* regarding property division at divorce differentiates between individual property brought to the marriage, property given jointly to the couple upon marriage, and property jointly acquired and held. How much one takes from a marriage depends on how many fixed assets one puts into it, and on the grounds for divorce.

Partition on divorce usually goes by mutual consent, or settlement under arbitration of friends or elders.... When the parties cannot come to terms, and go to courts for decrees, partition is usually determined by the grounds for the divorce, the party at fault being liable to forfeit some shares to which he or she would otherwise have been entitled.²⁶

Burma's laws have long been considered very fair with respect to property division in divorce, but even in theory, it is rarely the case that property is equally divided, since the division is based on who has made the larger monetary contribution to the household. According to commentaries, the relationship of supporter and dependent (*nissaya* and *nissita*) is deemed to exist between the husband and wife in the fol-

lowing cases:

- a) when one party brings much more property to the marriage and the other party little or none at all
- b) when one alone is instrumental in acquiring property
- c) when the property has been given specially to one by the King or Government.

When any property is inherited by a party during marriage, the couple are regarded as being in the position of *nissaya* and *nissita* in respect of such property, in which the *nissaya* gets double the share of the *nissita*.²⁷

Where the husband and wife mutually agree to divorce and the parties do not stand in the relation of *nissaya* to *nissita*, the joint properties should be equally divided between them....²⁸

The law does not explicitly distinguish gender roles in its descriptions of these relationships. However, given that traditionally women in Burma have relied on their husbands' earnings and worked mostly in the home, quite clearly women have customarily occupied the position of *nissita* or dependents. While women in Burma today often have their own earnings, many are unable to work full-time for income because of family responsibilities, and those who do often do not receive equal wages as men. Therefore it is very likely the majority of women seeking to divorce are still dependents. A woman dependent on her husband's earnings has the right to file for maintenance during a temporary or permanent separation,²⁹ and to receive a third of her husband's income, but only when certain conditions are met at the time of divorce.

If a woman "lives in adultery or refuses to live with her husband without sufficient reason, or if they are *living separately by mutual consent*," [emphasis added]³⁰ she loses her right to maintenance. If a woman initiates a divorce without such grounds as adultery or cruelty, or is seen to be at fault (because, for example, she committed adultery) she is not entitled to any compensation from her husband, regardless of what happened in their marriage.

If the woman is the cause of separation, for example, having an affair, we will gain nothing. Even the children, we have to give to the husband. In Kachin tradition, when the lady does something wrong... she hasn't the right to take the children or the right to take anything. But if the lady is not wrong, if she is a good housewife, does everything well,

but he wants a divorce, then the lady's side can ask for financial compensation from the husband. CINT 112

When you want to separate you just do it. Then you come to an agreement about whom the children will live with. Any property or inheritance will be split down the middle. But if the reason for the divorce is because the woman has a lover then she will get nothing. If the reason for the divorce is because the man has another woman, the man will still be entitled to half of everything, just the same. CINT 150

In addition, while the *Dhammathats* state that a woman whose husband deserts is entitled to alimony and child maintenance, she must wait three years before desertion can be established. Men, however, can claim desertion after only one year. Effectively, therefore, a woman is only entitled to alimony when her husband has divorced her without any of the "just causes" referred to above, or when she has been abandoned by him. In this case, with the long waiting period required, it is unlikely she will receive the allowance she is due. In most cases, once their husbands leave (and often they leave the community permanently), women have very little legal recourse in terms of property settlement, alimony or child support.

As a result of the qualifications placed on receipt of alimony, very few women actively initiate divorces, for fear they will not be able to survive financially alone, even when they are physically or emotionally abused by their husbands. In spite of the difficulties they endure in their marriages, many women find that their need for a source of income to support their children takes precedence over their desire to leave.

Even if our husbands are drunk and beat us, we cannot divorce them because they feed us. We don't look at the personality and the manners of the man because if the man can feed us, then we must love him. If the husband is alcoholic or a gambler then the wife must work to find money. CINT 62

Women have to feel very bad before they will divorce their husbands. They have to think about their children, because they will be left to look after their children alone. CINT 235

Furthermore, those women who do initiate divorce because of battery often wish only to be away from their former spouses and are therefore unlikely to seek or receive any monetary settlement.

I didn't take anything when I divorced him. I left everything

to him except my suitcase because I was afraid that he would try to contact to me again if I took something. CINT 284

Child Custody and Support

Usually you [as a woman] get half of the property and custody of the children, unless your husband didn't want to give you anything, in which case you'd get nothing. Usually the man has the advantage — they get the property but don't have to care of the children anymore. CINT 152

The *Dhammathats* rule that with regard to child custody,

It is for the parting parents to arrange and agree on which children should go with whom, the girls generally going with the mother, the boys with the father.³¹

Again, the gender division prevalent throughout the *Dhammathats* is preserved in this ruling, which appears to be founded on the idea that girls need to learn their life roles from their mothers, and boys from their fathers. Nonetheless, in practice, children regardless of sex commonly live with their mothers, especially if they are young at the time the separation occurs.

However, specific ethnic cultures that trace patriarchal blood-lines, including Muslims and Kachin and Chin sub-groups, follow their own customary laws, which regard children as the “property” of the father or his family. The risk of losing custody of their children as a result of a divorce also discourages women from separating from their spouses. While the mother can legally contest her right to keep the children, and often infant and young children stay with their mother, women do not always have the confidence to challenge their community elders on such decisions.

If a Rohingya woman gets divorced, she will leave her husband's family and go back to her parents. She can take the small children with her, but the elder ones will stay with the father. She can apply to the village elders or to the Religious Council, and the ex-husband is bound to pay until she marries again. However the husband pays only in a very few cases. Often they disappeared. CINT 177

In my village, the rules are that if a woman divorces her husband, the husband can take all the children with him. That is decided by the Village Chairman and the [Rohingya Muslim] religious leaders. There are only two ways: either

the husband takes the children, or the children can stay with their mothers, but then the husband has to provide food and money for them. In my case, I divorced him [because he took a second wife without my approval], so he can take the children. So I am sure he will take my children away from me if I go back [to Burma]! If he does it forcibly, there is nothing I can do. CINT 86

We only raise our children [in Kachin society]. Even if they live with us, they will always belong to the father's family. The Church elders decide in the case of divorce whether the children stay with their mothers or fathers. CINT 112

In the case of divorce, Chin women can look after their children for two or three years if they are young, but ultimately they take the father's name.³² CINT 216

In these societies, children may also be taken from widows and given back to their father's in-laws. This is particularly common in Chin sub-groups.

Three of my daughters are still alive. When my husband died, my eldest daughter was already married. I don't know about our customary laws. The headman and other people usually divide the properties. In my case, the headman and village elders decided. They gave me my youngest daughter because she was only three years old. The other one was 14, and went to my husband's brother. I went back to my parents' house. I could stay with them. CINT 172

Among my in-laws' family, when the father died, the wife and mother-in-law contested the custody of the two-year old daughter. The mother-in-law argued that the blood connection was stronger between her and her granddaughter, because the mother was a woman, and that as her son's blood offspring her granddaughter was her family's blood. The child's mother argued that she herself had nursed the child with her own breast milk. Finally the case was brought to court, and it was decided the girl belonged with her mother. But the mother-in-law threatened the woman that if anything happened to the child, the mother would have to pay her damages. CINT 216

The Criminal Procedure Code Section 488 affirms the moral obligation of fathers to support their children, with exact minimum monetary settlement determined by the presiding magistrate. Norms regarding child support appear very similar across Burman and non-Burman ethnic communities, in theory requiring that ex-husbands contribute to the care of their children. In fact, none of the women we spoke with had ever received such compensation.

I have had two husbands but neither has much sense of responsibility. When I split up from my first husband I was the one who had to look after the children. My present husband is the same; I don't know when I'm going to split up from him. He has to carry the burden of my first husband's two children as well as his own child and I don't know how long he can stand it. The father of my first two children has never sent money or anything. CINT 150

According to one Burmese woman lawyer,

If the mother takes the children, the father has to provide child support until they reach the age of 18. The minimum sentence for not paying child support is three months [imprisonment]. If when they are released, they still don't pay, they get sent back to jail. So what the men do is they just run away, without getting divorced. After they don't live there any more and they've fled to another place, often they marry again. The woman has to take care of the children and survive by herself. Maybe this man will split again, have the same problem again and run away. He just "builds a rice store in every village" [a traditional saying]. Some men are really bad. Nobody would spend money to arrest him, because first you have to spend money to find him, so he can do that. CINT 84

Shortcomings of Customary Law

It is obvious that even in theory, customary law views women very differently from men, reflecting social norms and values that a woman should be a devoted home-maker, whose responsibilities to her husband include bearing children, preferably sons. Women's rights to seek divorce are limited in comparison to men's. In fact, the grounds women are required to prove in order to claim alimony or child support essentially require that their safety be threatened or their marriages ended already. Even at this point, a woman forfeits her case (and thus her property rights) by initiating a relationship with a new partner. Her husband, however, is not governed by the same rules. When couples separate by mutual consent, a woman maintains her right to the marriage property, however she is not entitled to maintenance, despite the fact that women who work in the home are not usually paid. The qualifications under customary law regarding property division assign women's labour as homemakers approximately a third less value than that of men's — unless, of course, it is the case that women bring more fixed property to the marriage, but this rarely occurs. Furthermore, the law permits men to initiate new rela-

tionships without divorcing, but restricts women from claiming desertion and demanding alimony until such an amount of time has expired that it is unlikely they will be able to receive compensation of any kind.

Of equal relevance is the way that customary law is practiced. With the social censure on divorce, women are encouraged for the sake of appearance to stay with their husbands, even when they face brutality in their homes. Fear of being financially unable to support themselves and their children further dissuades women from parting with their husbands. As official divorces are rarely granted by village and quarter heads, for all practical purposes, they do not exist, so although couples continue to separate, few people today resort to any formal means of settlement when they end marital relationships. Women who are left without means of support cannot turn to the law for help in seeking redress. For many the only course of action that exists is remarriage as a means of survival. If this situation is to change, women need viable ways of obtaining legal separations that allow them to leave abusive situations, and receive adequate monetary support to allow themselves and their children a decent standard of living.

Finally, it should be noted briefly that inheritance in Burma, another area of the law where it has traditionally been said that women enjoy equal treatment, demands further scrutiny. The *Dhammathats* give inheritance first to a surviving spouse (or sometimes spouses, which can mean considerable disagreement), and then divide and assign property to children according to their order of birth and whether they are related by blood or adopted, with children of "lesser" wives receiving smaller portions. Ethnic groups following patrilocal clan systems such as the Chin, Kachin and Naga sometimes prohibit daughters from inheriting. Thus various customary laws are by no means always fair in terms of ruling on inheritance. We were unable to investigate these situations in detail in our own research. This is a subject that has been little examined in Burma and deserves more thorough investigation.

FINDINGS & RECOMMENDATIONS

Articles 15 and 16 of the CEDAW deal with women's rights under the law. Article 15 prescribes that women are entitled to the same rights as men under the law, including the right to represent themselves

legally, to enact contracts and to dispose of property. Article 16 affirms women's rights to freely enter into marriage with the spouse of their choice, and to choose the number and spacing of their children. Women's rights to have a nationality and transmit their nationality to their children are guaranteed under Article 9.

Women's enjoyment of their legal rights is at present severely curtailed, both by the legal codes in Burma and by the way they are applied. Without a constitution upon which legal rule is based, a legislative body elected to promulgate acts, or an independent judiciary, the law in large part does not function. The first step in promoting women's legal equality is to provide the necessary elements for a return to the rule of law.

Constitutional guarantees of non-discrimination on the basis of sex are necessary to cement the principle of equality under the law. A non-discrimination clause should be included in any national constitution that is written. Given that women have had little opportunity thus far to participate in constitution-drafting, the constitution should contain adequate provisions for amendment, to allow for their future input. Guarantees are also required that all people, regardless of nationality or ethnicity, receive equal treatment under the law.

Even before significant changes are made to existing laws, in criminal cases, vigilance is needed to ensure women's rights are respected during arrest, trial and sentencing. The regime should abide by their promises to the CEDAW Committee in guaranteeing the proper treatment of all women prisoners. All women political prisoners should be released, and appropriate medical treatment and counseling made available to those who need them.

As mentioned previously (*See Meetings & Machinery: The Government's Obligation to the CEDAW*), general legal review is needed to rid the existing codes of discriminatory legislation. In addition, there is a need to clarify and standardize the existing hierarchy of laws, confirming which bears precedence in cases where statutory law, customary law and international law conflict. Much of the statutory code dates from over a hundred years ago, and as such does not incorporate a rights-based approach to issues that potentially affect women. Efforts must be undertaken to remodel the existing laws to meet the

exigencies of modern life. Attention should be given to annulling or redrafting protectionist laws that, under the guise of helping women, restrict their rights to choose or enjoy the same opportunities as men. In particular, laws regarding sex work, reproductive technologies, and access to health practitioners need amendment. New laws should also be promulgated to guarantee that the principles of the CEDAW are enshrined and applied in domestic legislation. In conducting legal review, it is hoped that the government will make use of the expertise of regional NGOs and intergovernmental bodies with experience in women's human rights.

Laws on violence against women need to be made more explicit to reflect women's experiences of violence and apply appropriate penalties. The current narrow definition of rape is inadequate and specific references to other kinds of sexual assault are entirely missing. The law should be amended to provide more inclusive definition of rape as a crime of violence against the sexual nature of the person, and specific legislation criminalizing marital rape should also be enacted. References to women's modesty should be removed from the code, and replaced with references to women's physical and mental integrity. In order to prevent further victimization of survivors of rape and sexual assault, it is imperative that women's characters or behaviour are not called into question during trials. Furthermore, the laws must be assiduously applied to offenders, regardless of their position. The apparent impunity that judges, police officers, and members of the military currently enjoy flaunts their privileged status.

Burma's varied marriage and divorce laws, both statutory and customary, admit a multiplicity of standards for men and women from different ethnic groups, including differences in the age of majority and consent, and varying grounds for divorce. However, simply standardizing all laws under a single code in itself is no guarantee that gender issues will be appropriately addressed. Consultation should be undertaken with legal experts, women and men from various communities to determine the most suitable way of amending the law to make it more universally acceptable. Under any new codes, men and women should enjoy the same standards in cases for divorce. At present, practical financial considerations often dissuade women from filing for divorces, even in situations where they face extreme abuse. Adequate provisions need to be made to allow

women to divorce without fear of poverty, and to receive child support.

At the same time, it is necessary to monitor the application of the law and women's access to it. Few women access the law in Burma, and at present most of those who interpret the law are men, so there is little room for the introduction of changes expressing women's life experience. Increasing the number of women in positions of authority would enable more women to approach courts with cases of divorce and sexual and domestic violence. Gender training of judges, police officers, village and quarter heads and others responsible for registering and adjudicating cases of violence, marriage and divorce would increase the likelihood of women receiving redress for their grievances. Given that poor women whose rights are most often abused lack the resources or knowledge to seek justice, provisions should also be made for the creation of free legal aid societies, capable of giving particular attention to women's needs. Public education campaigns on legal rights generally, and women's specific rights to freedom from violence, are needed, not only to make women's exercise of their legal rights more prevalent, but also make men more aware that they are liable to be charged for acts of violence, including in the home. Legal reform should ensure the law functions at a practical level for women, with codes appropriate to promote and protect women's equality and means by which to enforce them.

NOTES

1. Shwe Mann Maung, "Myanmar Women's Day," Myanmar Perspectives, June 1998, Vol. 1.
2. On 28 December 1995, the 88 NLD delegates walked out of the Convention in protest of the SLORC's denial of appeals to liberalize the proceedings, and were subsequently declared expelled. A number of delegates fled to the Thai-Burma border.
3. Janelle Diller, The National Convention in (Burma) Myanmar: An Impediment to the Restoration of Democracy (New York: International League for Human Rights, 1998), p. 21.
4. It has been argued that the correct term of reference should be simply "customary law," since "Buddhism as a religion does not, as in Islam or Christianity, directly regulate family affairs. The law relating to Burmese Buddhists arose in accordance with Burmese customs and was not directly regulated by tenets of the Buddhist religion." U Myint Zan, "Of Consummation, Matrimonial Promises, Fault, And Parallel Wives: The Role Of Original Texts, Interpretation, Ideology And Policy In Pre-And Post-1962 Burmese Case Law," Columbia Journal of Asian Law, Vol. 14, No. 1, p. 155. The same article also refers to jurisprudence arguing that customary law goes beyond the *Dhammathats*. Here, however, we will continue to use the terms "Buddhist customary law" and "*Dhammathats*" for clarity, to differentiate between these laws and other ethnic customary laws.
5. Xinhua "Myanmar Promulgates Attorney General Law 2001," 28 February 2001.
6. UN Charter, Art. 1 (3).
7. Maung Maung, Law and Custom in Burma and the Burmese Family (The Hague: Martinus Nijhoff, 1963), p. 38.
8. Union of Myanmar, "Report on the Convention of Elimination of All Forms of Discrimination Against Women, March 1999," p. 41.
9. Union of Myanmar, "Report on the CEDAW," p. 17.
10. Ba Tun, Principles of Modern Burmese Buddhist Law (Calcutta: Eastern Law House [Private] Ltd., 1957), p. 97.
11. K.S. Venkateswaran, Burma: Beyond the Law (London: Article 19, August 1996), p. 2.
12. Union of Myanmar, "Report on the CEDAW," p. 17.
13. Amnesty International, "Myanmar: Prisoners of Political Repression," April 2001, www.amnesty.org
14. Amnesty International, "Unsung Heroines: The Women of Myanmar," May 2000, AI Index: ASA 16/04/00, p. 6 – 9.
15. Amnesty International, "Myanmar: Prisoners of Political Repression," April 2001, www.amnesty.org
16. UN Special Rapporteur on Myanmar Report to the General Assembly, 1999, Paragraph 19.
17. U Myint Zan, "Of Consummation, Matrimonial Promises, Fault, And Parallel Wives..." p. 191 - 192.
18. Maung Maung, Law and Custom in Burma..., p. 52.
19. Maung Maung, Law and Custom in Burma..., p. 56.
20. Maung Maung, Law and Custom in Burma..., p. 98.
21. Maung Maung, Law and Custom in Burma..., p.77.
22. Mi Mi Khaing, The World of Burmese Women (London: Zed Books, 1994), p. 17
23. Ba Tun, Principles of Modern Burmese Buddhist Law, p.105.
24. In fact, there is some conflict between the *Dhammathats* and the Penal Code, parts of which outlaw and penalize polygamy. However, since the Penal Code is British, and customary law is said to hold sway in all matters of family law, the *Dhammathats* have priority.
25. Maung Maung, Law and Custom in Burma..., p. 78.
26. Maung Maung, Law and Custom in Burma..., p. 95.
27. Ba Tun, Principles of Modern Burmese Buddhist Law,

- p. 109-110.
28. Ba Tun, Principles of Modern Burmese Buddhist Law, p. 111.
 29. Maung Maung, Law and Custom in Burma..., p. 100
 30. Maung Maung, Law and Custom in Burma..., p. 102
 31. Maung Maung, Law and Custom in Burma..., p. 98.
 32. Only a few ethnic groups in Burma follow the practice of having family names. Most do not use surnames, only personal names. Accordingly, women do not change their names at marriage. However, children in ethnic groups using surnames carry the names of their fathers.