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Introduction

Lack of improvement in the status and lives of women in Burma can be understood in relation to two deep and interlinked issues. First, nearly all Burma's ethnic cultures and sectors of society are patriarchal drawing on traditional gender roles to exclude most women from participating in political processes and public leadership roles. Second, since the military came to power in 1962, all sectors of Burmese society have become increasingly militarized, thus, further marginalizing women in political life as well as subjecting large proportions of the population to widespread and gendered human rights violations.

WLB's mission is to work to achieve women's equality in Burma through ensuring and protecting women's rights. WLB recognizes that there are many things that need to be done on many levels to achieve this – economically, culturally, socially, legally and politically. Particularly important is the need to recognize past wrongs, including the situation of gender discrimination and its consequences. Recognizing the history of gender discrimination in Burma is a basis on which future positive action for change can be grounded. Based on the WLB's 2006 gender perspective paper, this briefing paper summarizes why it necessary to address issues of women's unequal status in Burma by enshrining our rights, and mechanisms for affirmative action to achieve our rights, in a future federal constitution of Burma.

A constitution lays down the foundations for the structure of the political and legal system of a political community and reflects its core values and aspirations. The WLB seeks a constitution for Burma that enshrines a federal democratic system that guarantees – that is, ensures and protects – the rights of *all* its citizens. Equality before the law cannot be guaranteed unless the interests of women are included within the constitution. Therefore, it is essential that women are involved with all facets of the constitution from its inception, through the drafting process to the final document.

To achieve this, we emphasise the role of providing legal provisions for affirmative action for women. Specifically, we call for the inclusion of quota systems to be integrated into all levels of the electoral system – from the national to the local level – and in every level of the three branches of government: the executive, judiciary, and legislature.

This briefing paper sets out in three stages our case for introducing a quota system into a future federal Burmese constitution. First we analyse women's involvement and representation in Burma's past constitutions and the various constitution drafting processes of the present. Second, we outline our rationale for enshrining affirmative action, and quota systems in particular, in a federal constitution. Third, we recommend specific steps to be included in a future constitution.

A) Women in constitution-drafting processes of Burma

Since independence from British colonial rule in 1948, Burma has introduced two national constitutions: the first in 1947 and second in 1974. While women experienced discrimination prior to colonization, the 1947 constitution, based on British common law, legalized various forms of gender discrimination in Burma for the first time. Women were not represented in either of these constitution-drafting processes and their interests were not reflected in either constitution. While the principle of equality for all citizens was enshrined in both constitutions, there was no recognition of the need to create measures to ensure that political, social, cultural and economic changes occurred to bring about equality in practice. Therefore, while women's rights and equality were implied in the constitution, in practice, they were not realized.

Burma has been ruled without a functioning national constitution since 1988 when the rule of law was nullified by the military dictatorship in response to nation-wide civil uprisings calling for a return to democratic rule. A military-led constitutional drafting process has been sporadically on going since 1993, however, as of January 2006, it is again deferred, this time until the end of 2006. Through this process, known as the National Convention, the military regime, currently called the State Peace and Development Council (SPDC), seeks to install a system of rule that reserves 25% of parliamentary seats for military representatives. Women constitute approximately 5% of the 702 delegates selected to participate in the SPDC's National Convention.

Burma's border-based opposition movement is also engaged in drafting a constitution for Burma. However, our proposed constitution is based on a federal democratic system of states. In February 2005, all organisations involved in this drafting process endorsed eight basic principles for our draft constitution; sovereignty of the people, equality, self-determination, federalism, minority rights, secular state, multi-party democratic system and, importantly, human rights and gender equality. Political organisations of ethnic nationalities in opposition to the military are also drafting state level constitutions in line with this proposed federal system. The WLB and its member organisations are the main women's representatives in these pro-democratic opposition constitution-drafting processes.

The WLB is working within these constitution-drafting processes to encourage the promotion and acceptance of principles and practices of gender equality as well as the meaningful participation of women in decision-making processes. Achievements have been reached in women's participation in these processes in conjunction with male counterparts and we seek to continue to build on these.

B) Affirmative action and the constitution

The WLB believes that there are today several convincing reasons why instituting gender equality in a national constitution can no longer be avoided or denied. These reasons include:

- Gender equality is necessary for women to enjoy full citizenship; they must have the same freedoms and opportunities as men to decide how to live their lives. As citizens equal to men, and constituting approximately 50% of the population, it is the basic right of women to participate fully in the political, social and economic life of the country
- Gender equality is necessary as women have specific interests that need to be addressed by the state that are currently overlooked
- Gender equality is necessary to acknowledge past and current forms of discrimination and human rights violations
- Gender equality is necessary for a strong democracy to develop and function well as contemporary democratic and federal systems are founded on a relationship of equality between citizens, and justice within the political community
- Gender equality is necessary to reach development goals without causing more harm
- Gender equality is now a global norm. We now live in a global era of democracy that holds gender equality as a central norm for civilised society. To participate in an increasingly globalised world, Burma must recognise and adjust to modern norms of gender and justice, albeit in a way that remains respectful to cultures in Burma as they transform over time.

For the WLB, equality includes full empowerment to participate in all political processes. Thus, full political citizenship involves not only the right and the opportunity to vote, but the right and opportunity to participate in all levels of the state. We recognise the distinction between the formal but nominal right

to hold a political position and actually exercising power and influence as a woman in that position. In order for the latter to be realized in Burma concrete action to change social and cultural norms and practices must be reinforced with appropriate legally binding measures and political will.

As mentioned above, historically the principle of equality has been enshrined in Burma's national constitutions, however, this has not resulted in positive change in the status of women in Burma. The current constitution-drafting processes present the opportunity to not repeat past mistakes and learn from the experiences of other countries. Therefore, we recognise the need to reinforce the principle of equality in a future federal constitution of Burma with new mechanisms that can produce affirmative action for women.

Affirmative action needs to be taken up at all levels of society, however, this cannot be achieved without the leadership of the state. This is because the state is the only institution with the authority to enforce change to overcome structural barriers to equality and prevent discrimination in the economy, education, family, society politics and so on. Affirmative action requires government policies, legal assurance and education programs to create greater opportunities for women and girls. In the context of a future federal constitution, a concrete and proven mechanism to bring this about is the quota system for women's representation in politics.

Gender parity in political representation is essential if women's interests are to be heard, respected and accepted in government policy. Experiences in other countries have shown that the introduction of quotas for women in politics has resulted in women being elected and gaining public respect on their merits as political leaders. Countries where quota systems are absent see women's political representation continuing to be very low despite various programs for lifting women's political status.

The WLB is calling for a quota system for women in:

- 1 the party system
- 2 the electoral system
- 3 every level of the three branches of government: the legislature, the executive and the judiciary.

In relation to a quota system, the WLB emphasises two things. First, quota systems are mechanisms for change for gender equality, not solutions in themselves. Therefore, quota systems need to remain in place until gender equality has been achieved and the mechanism has become redundant because of its success. Second, quota systems alone are not sufficient mechanisms for change but are designed to work in conjunction with other mechanisms and strategies for realizing gender equality.

International law and constituting women's rights in Burma

As a modern state, Burma has the responsibility to protect its citizens. As in other parts of the world, the nation-state has proven a necessary but somewhat flawed institution to protect people's lives and thus victims and survivors of state perpetrated crimes have sought paths to justice through the international sphere. The development over the past 50 years of global international norms for justice has resulted in a strong body of international law that enshrines human rights, including standards and mechanisms for women's rights. The dramatic transformation of, and development in, international law over the last 20 years in particular has fundamentally changed the meaning and practices of state sovereignty. Thus, there is an increasingly interconnected relationship between national law and international law such that upon ratification of an international treaty or convention, a state is obliged to incorporate that law into national law.

These fundamental political transformations have blurred the relationship between the state, its citizens and international political institutions. This has also changed the context in which constitution drafting for nation-states takes place. Because of this very important connection between international law and national law, the WLB draws on international law to provide appropriate standards for gender in governance and for concrete strategies for achieving change.

Moreover, despite 30 years of isolationist policy, the Burmese military regime now expresses a strong desire to be accepted as a member of the international community through the United Nations. Though the current system of international law is not enforceable and ratification of international law treaties and conventions is voluntary, the Burmese military regime ratified the women's rights treaty, the Convention on the Elimination of Discrimination against Women (CEDAW), in 1997 and has participated in the most important international women's right process, the United Nations women's conferences of Beijing 1995, Beijing +5, 2000 and Beijing +10, 2005.

Both the CEDAW and Beijing Platforms for Action stress that women's participation in government and legislative assembly is necessary in ensuring gender equality. In particular, both political standards stress the need for setting goals and implementing measures to achieve these targets. According to CEDAW, the quota is the most basic kind of 'temporary special measure' that accelerates *de facto* equality between men and women. Specifically, Article IV of CEDAW allows for the adoption of 'temporary special measures aimed at accelerating *de facto* equality between men and women.'

C) WLB's recommendations for a future constitution of Burma

Drawing on these two global women's rights processes to which the SPDC has already agreed to adhere, the WLB recommends the following principles and actions be incorporated into all draft constitutions to be submitted to the peoples of Burma:

1. Recognize the principle of the full advancement of women

Governments of Burma must make an absolute commitment to the full advancement of women's equal rights and to the removal of all barriers that hinder women's access to achieving actual equality with men.

2. Adopt a minimum 30% quota for women at all levels of government

International case studies of the quota system demonstrate that this is the most effective strategy to bring about *de facto* equality and representation of women in politics where historically, prejudice and discrimination have prevented women's advancement in government and politics. Such measures will also serve to affirm Burma's commitment to its new democracy and gender equality in Burma.

3. Adopt a proportional representation system of government

This form of government should be adopted in a federal democratic Burma as it is the most effective system for increasing both women's and minority groups' representation in government. Such positive measures/affirmative action would work to improve representation of groups who have been historically marginalized.

4. Create a Ministry of Gender Equality to enforce gender equality laws

Full equality for Burma's women citizens requires that the government of federal democratic Burma must not be content with simply adopting a quota system but must also provide support to women in all spheres of society by creating a Ministry of Gender Equality. This ministry should be responsible for ensuring gender equality policies are followed and provide women with a venue to address their grievances.

Conclusion

Actual gender parity, the ultimate goal of the drafters of and signatories to the CEDAW, should remain an ultimate goal of a future government of a federal democratic Burma. Because prejudice and discrimination towards women exist in all cultures and in every country, it is incumbent that states address these injustices. Furthermore, states must seek to remedy infringements against women's human rights and assist to ensure that women are able realize the same professional and personal goals as their male counterparts.

Under the CEDAW, and the re-examination of its policies through the Beijing Platform for Action, governments of Burma are obligated to take active measures to achieve true gender equality in all of Burma's social and political arenas. Burma's women have for too long struggled silently in the shadows of their male leaders. It is now time for these same men to look behind them and recognize the practical inequality experienced by women and realize that without true equality, there can never be a truly democratic Burma.

Women's League of Burma

The Women's League of Burma (WLB) is an umbrella organization comprising twelve already-existing women's organizations of different ethnic backgrounds from Burma. WLB was founded on 9 December, 1999. Its mission is to work for women, and to work for the increased participation of women in all spheres of society in the democracy movement, and in peace and national reconciliation processes through capacity building, advocacy, research and documentation.

Aims

- To work for the empowerment and development of women.
- To encourage women's participation in decision-making in all spheres of life.
- To enable women to participate effectively in the movement for peace, democracy and national reconciliation.

By working together, and encouraging cooperation between the different groups, the Women's League of Burma hopes to build trust, solidarity and mutual understanding among women of all nationalities in Burma. The 12 member organisations are listed on the inside back cover of this report.

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