

LEGAL ISSUES ON BURMA JOURNAL No. 9, AUGUST 2001
BURMA LAWYERS' COUNCIL**Women and Law in Burma****B.K. Sen***

Women in Burma are struggling under the military regime. There is no policy, law or programme for the development of women. Instead, women are often the target of particular abuse. Rape by soldiers is common. Military officers are even involved in the trafficking of Burmese women into prostitution in Thailand.

The women in Burma are struggling, but continue to find ways to survive, nurture their communities and resist the military regime with inspiring grace and humour. The vision of women for Burma is a foundation on which a new, democratic and just society should be built. Daw Aung San Suu Kyi said, "Women are generally regarded as home-makers, tenders of the hearth around which the family gathers, weavers of the gentle ties that bind faster than the strongest iron chains".

But women in Burma have to battle against many odds: tradition, cultural discrimination, male domination, lack of access to information and education, and inequalities that have become entrenched by law. The most critical factor in the transition to a new society in Burma is the lack of provisions in law for the empowerment of women and their participation in decision-making processes.

The population of Burma is 44 million with the same ratios for men and women. A large section of the population is engaged in agriculture. Under the military regime the construction sector has been considerably expanded. Although it is maybe not always so clearly visible, the contribution of women in economic activities is substantial. In many countries, equal social, political and economic rights are provided by the respective constitutions. In Burma, however, the junta rules without a constitution. Widespread discrimination of women in Burma has become a matter of great concern all over the world.

Lack of Female Participation: Disparity or Discrimination?

The Asia-Pacific Summit of Women Mayors and Councillors, held in June 2001, released a report which highlighted the disparity in the involvement levels of women in Asian governments.¹ The issue has become disparity rather than discrimination. The disparity is directly related to quota systems for the allocation of government jobs to women which, when introduced, instantly change the levels of women's involvement. The state of affairs in Burma, in the absence of information, can be perceived in a deductive method. There is no democracy in Burma, while equality between women and men is a basic principle of democracy. Moreover, where there is no Rule of Law and no accountability, where statistics are being cooked up and policies are designed according to the sweet will of the junta, where the will of the people is bulldozed, gender equality can hardly be expected. Gender participation would expose the xenophobic military regime to 'threats' from many quarters.

Hence, female representation in the central government has been brought to zero. Even female representation in the local government has been marginalized. There is no local government in Burma which is not fully staffed by military officials. The state is totally centralized. In such a context, women's representation would obviously loosen the grip of the military.

The Current Legal System and Women in Burma

The current legal system in Burma has evolved from the Common Law, which is the name given to the main system of laws and practices in England. Common Law was based mainly on judicial interpretation of local customs on judicial and royal decisions and acts of formal legislation. Its essence is that it relies on the development of legal principles as laid down in judicial rulings. It is different from the Civil Law system, in which law is deliberately laid down as a complete, codified system by means of legislation.

The current legal system in Burma comprises Customary Law, Statutory Law, and judicial decisions. There is currently no constitution. The customary laws include Burmese Buddhist Law, Hindu Law and the traditional customs of the ethnic groups. According to Section 13 of the Burma Laws Act,² the customary laws have the force of law. In matters which cannot be decided by either customary or statutory law, they shall be decided by rule of justice, equity and good conscience. In this context there is hardly glaring discrimination against women primarily because the source of law is the Common Law, which is based on the principles of the Rule of Law. Buddhist women, constituting the majority of women in Burma, have been given protection under the Buddhist Women's Special Marriage and Succession Act of 1954,³ the only Special Marriage Act in Asia which protects the rights of Buddhist women. Save and except this statute, Burmese Buddhist Law is not codified. However, for Christian women in Burma the law is codified, as they are governed by the Christian Marriage Act,⁴ the Burma Divorce Act and the Succession Act⁵ (regulating matters of inheritance). The Hindu women are governed by the old Hindu Law, not by the Hindu Code. Similarly, Muslim women are governed by Islamic Law. Although these laws are often perceived as discriminatory, they are not deliberately discriminatory: the snag is by and large in the traditional, cultural perception of gender inequality.

The main statutory laws which interact with the people in everyday life are the Penal Code (law relating to offences),⁶ the Transfer of Property Act (relating to the purchase, sale and other transactions of property),⁷ the Contract Act (relating to making agreements and contracts),⁸ the Partnership Act⁹ and the Burma Companies Act¹⁰ (relating to business dealings), the Bar Council Act (relating the enrolment of lawyers to practice),¹¹ and the Burma Medical Act (for practicing doctors).¹² For procedural matters the Code of Criminal Procedure,¹³ the Code of Civil Procedure,¹⁴ the Evidence Act¹⁵ and the Court Manual are the primary laws upon which the legal system is based. Apparently women in Burma are not discriminated under these laws. This is not to the credit of the junta. It is because the junta is not capable of drafting a new legal system to replace the existing one. The best they tried was the sham 1974 Constitution-clamped down on the people as a new judicial system-which collapsed like a house of cards in 1988.

Thousands of women and girls are still being trafficked into Thailand, sometimes to escape forced labour, sometimes to avoid human rights abuses. They end up in various sectors such as factory labour, domestic service and the sex industry. Burmese authorities can charge the women under the

Burma Immigration (Emergency Provisions) Act of 1947¹⁶ and the Suppression of Prostitution Act of 1949.¹⁷ The legal provisions include solicitation, luring, and approaching. The maximum punishment is 3 years imprisonment. Section 12(1) of the Suppression of Prostitution Act provides detention of a woman intended to be used as a prostitute. The Burmese junta amended the Act by increasing the maximum punishment to 5 years. The magnitude of the increase of the crime was lost sight of and compared to the action taken against political offences, Burmese law enforcement has so far been openly Draconian. Sexual harassment is not addressed in any law. The Child Law of 1993 (SLORC Law No. 9/93)¹⁸ regulates punishment for guardians of the child in case of prostitution. Section 361 of the Penal Code describes the actions to be taken in case of kidnapping, Section 388(a) against procurement of minors, Section 366(b) against the importation of girls from other countries, Section 369 against the importation of children under 10 years, Section 370 against slave trade, Section 372 against minors for prostitution, Section 373 against selling and purchasing young children, Section 376 against sex with minors under 14, and so on. If the laws were implemented and enforced, they would certainly help to improve the current situation. Unfortunately, laws galore but zero actions.

Traditionally timid Burmese women lack a great deal of knowledge about rights, and lack information on the criminal laws that protect them from abuses.¹⁹ Obviously, such factors contribute equally to the problem. According to one of the top Burmese generals, women rights is an issue that does not need to be talked about in Burma, because, "Burmese women already enjoy equal opportunities with men under a system of universal suffrage". The meaning of women's rights in Burma has been wrongly portrayed as a potential cause of instability in Burma. In fact, rights entail a whole assortment of important duties and responsibilities necessary to establish a society in which justice prevails. Only then can genuine peace and stability follow.

Women and Religious Laws

According to the official statistics, nearly 90 per cent of the population of Burma is Buddhist. Burma has remained relatively free from the influence of Hinduism and Confucianism, and this has been the main reason for women's relative freedom. The other religions in the Union include Muslims and Christians. The laws regulating marriage, divorce and inheritance vary according to their respective customs. Buddhist laws do not discriminate women, save that bigamy is allowed for men, while women can have only one husband. Buddhist Law does not explicitly regulate the provision of maintenance, in contrast to Islamic Law. Maintenance remedies for Buddhist women are to be pursued under the Code of Criminal Procedure. Buddhist women in Burma are protected by Burmese Customary Law in case they marry men of other religions or foreigners. Burmese women of other religions do not have this legal protection. In case of divorce, Buddhist women have equal rights to men in respect of property inheritance. ²⁰

The Buddhist Dhammathat code does not give an age requirement for men to marry. It only specifies that the man must be 'mature': if he is mature, he can marry. This was decided in a 1975 case decision. As for women, they must also be mature, which means that they must be at least 16 years old and they must have their parents' consent. (This is different from Burmese Customary Law, which stipulates that women can marry after the age of 14). If there is no such consent, parents are allowed to nullify the marriage. But if a woman and man have been living with the woman's guardian for a long time, then parents lose their power to separate them and must accept the marriage. The question

remains whether guardians are different from parents in this case. If a woman is older than 20, or when she is married, she no longer requires permission from parents or guardians.

If Christian women in Burma want to marry, they have to go through a church ceremony or arrange for court marriage. For Muslim women, Islamic Law regarding marriage and divorce is strict with male preference. For men, only maturity is required. This basically means reaching puberty. If maturity is not evident, the man must be at least 15 years old. Regarding women, Islamic Law says, "Presumption of Law" without further details. For Hindu women, Hindu Customary Law gives no limit for the age of men to marry. But this is not the case for women: the age of sixteen is defined as mature. Under the Hindu marriage law, a man must be 18 in order to marry. Hindu parents sometimes arrange marriages for their children before puberty (at the ages of 10 or 12). Such marriages are not considered void in spite of the young age of the children.

Due to the different laws for different religions in Burma, the Special Marriage Act of 1872²¹ regulates mixed marriages. According to this law, men must be 18 years old and women 14 in order to marry. If a couple share the same religion, they can follow the respective religious laws. By and large, women in Burma do not usually feel discriminated due to tradition and customs. Main issues relating to women are the imbalance in workforce participation, the labour potential of women and their role in social and economic development.

Divorce is allowed under Burmese Customary Law if one of the three following conditions are met: (a) there is mutual agreement to divorce; (b) the husband becomes a monk; (c) a crime is committed by either the husband or wife. Crimes consist of the husband committing adultery (which is a normal criminal case), the wife committing adultery (which is a serious criminal case), cheating (although the law does not describe in detail what this involves), or 'fabrication in many ways' (again, the law does not say what this involves).

The Burma Divorce Act of 1869^[22] is only for Christians. A husband can apply for the dissolution of marriage on the grounds of adultery, but a wife cannot. A wife may divorce if (1) her husband changes his religion or marries another woman; (2) the husband commits adultery which is incestuous, or bigamy with adultery; (3) the husband marries another woman with adultery; (4) the husband commits rape, sodomy or bestiality (although the law does not say toward whom, nothing is said about marital rape); (5) the husband commits adultery and the cruelty is so bad that it entitles the woman to divorce; (6) the husband is adulterous and deserts the wife for 2 or more years without excuse. Following divorce, financial support may be required under the Christian Law, Section 36, which says that the husband is liable for payment depending on the order of the Court. But payment cannot exceed 20 per cent of the husband's average income in the three years prior to the Court's order. The wife's money is also taken into consideration. The Court will decide what is reasonable, with provisions regulated by the Code of Criminal Procedure. Regarding division of property, there are very few guidelines under Christian law. It will be necessary to look at case law, but basically it depends on the case and the reasons for divorce. The ratio in property division varies accordingly. Regarding the custody of children, customary law must follow the Guardians and Wards Act of 1890,²³ as here may be no different practices based on religious differences.

The CEDAW in the Burmese Context

Current policies of the junta marginalize the role of women. It is very important at the outset to refer to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁴ resolutions. These have been formulated after a great deal of research and consultation. The basic fact that has to be kept in mind is that tradition, culture and development in Burma have consistently kept the women marginalized. If they have to be lifted from their current unequal position, some structural policy has to be initiated for transformation of the situation. The CEDAW provides useful guidelines. The Burmese military junta signed it in 1997.

However, the junta made a reservation on Article 29 (the dispute-settlement provision) of the Convention. Article 29(1) says, "Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court". The Burmese junta, however, countered, "The article 29 is not the basic article of the convention and not fundamental to the object and purpose of the treaty. Most of the articles of the convention are compatible with the articles of the Myanmar Law and prevailing practices, Myanmar feels that it is not necessary to refer the dispute to the International Court of Justice" (sic).²⁵

In July 1999, the junta submitted a 41-page initial country report (purported to outline the status of women in Burma) to the CEDAW Monitoring Committee. The report reveals the extent of the junta's deliberate non-compliance with the CEDAW resolutions. The junta stated that, "There is nothing wrong in Myanmar. (...) The status of Myanmar women is very unique as they have been bestowed equality with men as an inherent right". Such a self-righteous attitude repudiates the declarations of the Convention and is detrimental to the cause of gender equality. Although Burma has 135 ethnic groups, the report did not include any information about how the human rights of women in all those ethnic groups are guaranteed and promoted. There was no information on women's rights to terminate a pregnancy resulting from sexual violence, no information about the high rate of maternal mortality in Burma, no information on the situation of women affected by HIV/Aids, and no information on the trafficking in women and girls, despite the magnitude of these problems in Burma. In January 2000, at its 22nd session in New York, the CEDAW Committee heavily criticized the junta's report.

Questions were raised by the Committee regarding the junta's lack of compliance in implementing its obligations under the treaty. The Committee is concerned that the Myanmar National Committee for Women's Affairs²⁶ does not receive a budget from the junta despite its responsibilities for policy making and its roles as an intersectoral coordinating body. The CEDAW Committee is further concerned that the Myanmar National Working Committee, an operational body, is exclusively comprised of voluntary members. The Committee has urged the junta to revise existing funding allocation policies to ensure that the nation has sufficient financial and human resources to effectively carry out its mandate. The Committee considers forced labour of women to be a contemporary form of slavery and a denial of their rights, and is concerned that the Village Act and Towns Act remain effective in Burma.²⁷

The Committee is very concerned about women in custody, especially with regard to their being subject to sexual violence; and about the gross human rights violations by the military. In the rural areas of Burma, where the men have to hide in the forest when the soldiers come to the village (because otherwise they would be killed by the soldiers) the women become easy preys. They are

forced to work on military infrastructure projects, to carry military supplies for the soldiers, to act as minesweepers. And, even worse, a lot of women have become the army's sex slaves. Nothing is done to stop this, and soldiers are not prosecuted. Section 5 of the Penal Code, though not specific to women, could have repercussions as it says, "Nothing in this Code is intended to affect any act for punishing officers, soldiers, sailors, or airmen in the services of the government or any local or special law". This leads to a situation where army law overrides the Penal Code, making the army law the overall law-providing impunity to the military. The junta has never given any information on how the law deals with punishment for members of the armed forces. For example, army officers guarding forced labour projects demand sexual favours in return for lighter duties or release from conscription. The army has sold many women into prostitution for as little as 35 dollars. Although Burma has signed the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, it has not ratified this Convention.

The 54th session of the Commission on Human Rights in 1998 has called to implement the Platform for Action on the Trafficking in Women. The CEDAW Committee concluded that there was due concern for the status of women in Burma. It was obvious from the junta's report that no state funding was allocated to women's issues, while it recommended in particular the prosecution and punishment of the violators of women's rights, and gender sensitivity ("attitude adjustment") training for military personnel. There is the law in Burma to punish the violators, but law enforcement authorities will not simply enforce it as it serves a political purpose. The CEDAW Committee has requested the junta to include more information and data in its next report on the implementation process of the Convention, and urged the junta that necessary action is taken to bring perpetrators to justice.

A crucial point is that the Burmese junta rules the country without a constitution, while Article 2(a) of the CEDAW document says, "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to embody the principle of the equality of men and women in their national constitutions (...)" Article 7(a) says, "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies". Has the junta convened any election in any form? Article 7(c) ensures, "The right to participate in non-governmental organizations and associations concerned with the public and political life of the country". However, there is no Right of Association or Freedom of Expression in Burma. Except for the international organizations, all organizations in Burma are state-controlled. The women in these organizations are selected from the wives and relatives of army officers.

Another focal point in the CEDAW document is Article 4, which says, "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved". The question is what kind of 'special measures' have been taken by the junta towards the Convention's goal. The junta has not undertaken any measure or project to enable a positive change in the societal attitudes on the role of women, or policy advocacy towards capacity building for women. The junta simply stated in its report that under the Ministry of Education "a number of activities" has been developed which meet the requirements of the CEDAW. However, these activities are all stereotyped, and none as

required under the CEDAW.

The restrictions and vilifications that the junta is carrying out against Daw Aung San Suu Kyi are clear evidence of the violations of the CEDAW Convention. Similarly, in spite of the fact that the Jail Manual clearly provides special facilities for female prisoners such as health care and fair treatment, none of these have been observed in Burmese prisons. The main problem here is the complete lack of accountability. The Judicial Law No. 5/2001 contains an amendment which empowers the Supreme Court to visit the jails to inspect compliance with the Jail Manual regulations. But no state-owned newspaper in Burma has ever reported about the compliance of the Judiciary with this law. It is obvious that the amendment was made to create a false impression to the international community of the junta's role, and to take the intervening role away from the International Committee of the Red Cross regarding jail inspection visits. Although in 1964 the junta allowed the then imprisoned Chief Justice to attend his wife's funeral and stay at the funeral house for three days (according to Burmese custom), Daw Aung San Suu Kyi could not see her dying husband in 1999.

Women: Main Victims of Bad Healthcare and Education

Women, both in Burma and in the refugee camps along the borders, suffer from a growing lack of access to family planning and prenatal care, inadequate nutrition, increased maternal mortality, and ineffective HIV/Aids education. The few health services available are often rudimentary and have deteriorated seriously over the last decade. In its "World Health Report 2000", the World Health Organization ranks Burma next to last-190th of 191 countries surveyed-in terms of overall health system performance. According to the International Planned Parenthood Federation's "Country Profile" of 1998, only 60 per cent of the refugees have access to hospitals. Patients have to purchase their own medicines and pay bribes to receive care in a corrupt system. The estimated maternal mortality rate is 517 per 100,000 live births, compared to 80 in Malaysia. The underfive mortality rate is 114. Of 174 countries rated in the United Nations "Human Development Index" for 2000, Burma ranked 125th, barely ahead of impoverished African states such as Equatorial Guinea. 60 per cent of Burmese lack basic sanitation and 40 per cent have no access to safe water. Burma also ranks low in the UN's "Gender-related Development Index" (GDI). According to the United Nations Development Programme's "Human Development Report 2000", the Burmese junta spends over 200 per cent more on the army than on healthcare and education combined. Other analysts estimate that the disparity is actually far greater. The main victims of low spending for health and education are Burma's women and children.

The leading causes of maternal mortality in Burma are labour trauma, postpartum haemorrhage and retained placenta. Abortion is also a major cause, with a mortality ratio of 1:3. Abortion is illegal in Burma. Sections 312 and 314 of the Penal Code say that anyone causing a miscarriage will be punished with 3 years imprisonment, and in case of causing death it will be 10 years. UNICEF estimated in 1992 that 58 women die every week due to illegal abortion, while 50 per cent of maternal deaths are due to illegal abortion. The World Bank has estimated that of the one million HIV/Aids cases in Burma, women are suffering most. Women are usually uninformed about HIV risks. As many as 40,000 Burmese women are believed to be employed in Thai brothels. Thousands of Muslim women from southwestern Burma have been trafficked into prostitution in Pakistan. Some are abducted, while others are lured with false promises of employment. Many contract Aids or other serious diseases. Because the Burmese junta strictly controls and censors the media, adequate

information on public health is never given. The junta's restrictions on freedom of expression and community participation, and its prohibition of civil society are main obstacles that women face regarding public health and prevention of diseases. The UN working group on Human Development in Burma reported in 1998 that fewer than one-third of all girls who enroll make it through primary school. The junta spends less than 1.1 per cent of its gross domestic product on education, and has over the years systematically failed to supply information on the educational status of girls.

The junta's indifference toward these critical issues is enough evidence to indict it about its crimes against human development. The systematic military repression creates an atmosphere of fear and is a grave detrimental factor for the educational process. Traditional gender attitudes, about which the state does very little, hinder progress. There is little perceived social value in educating women beyond bare literacy. The women in Burma are the worst hit by the economic crisis. They have to leave their traditional family roles to look for paid employment. This is seriously affecting the upbringing of the children with proper values. The coming generation will be stripped of all that people in Burma were proud of. The junta created a law prohibiting women between 16 and 25 to cross borders unless accompanied by legal guardians. Although this law is supposed to protect the women, the result has been the opposite. Instead of protection it has led to suppression, while the women have been made more dependent on traffickers. Lt-Gen Khin Nyunt, the leader of the Burmese junta, stated at the Fourth World Conference on Women in Beijing in 1995, "Myanmar women are enjoying equal rights with men on political, economic, administrative, judicial and social aspects". He said that he had in view the UN Convention on Political Rights of Women, signed by Burma in 1954.

The Labour Situation of Women in Burma

The labour situation in Burma often sees different treatment of women and men. This can also be found in laws. For instance, the Apprentices Act of 1850²⁸ is clearly outdated but has not yet been repealed. According to the Workmen's Compensation Act of 1924,²⁹ when compensation is paid for the death of a relative, no lump sums can be given to women unless this is done through a Commissioner appointed by the government. The Mines Act of 1924³⁰ regulates specific restrictions on women, e.g. they are not allowed to work underground unless they are in the health services.

There are currently hardly any women in the Burmese armed forces. Women are not allowed to apply for the DSA (Defense Services Academy), OTC (Officers' Training Course) or OTT (Officers' Technical Training). It is not in any laws or regulations that women cannot apply, but in the recruitment advertisements it says, "Only men should apply". Women can only apply for nursing in the army medical service, but even there all commanders are men. More female representation would probably transform the very character of the military government into a semi-civilian form of government. At least, it would have an attenuating influence on military rule.

The junta's open policy in trade and tourism, supposedly to boost the economy, saw the rapid construction of hotels, bars and night clubs. The sex industry soon followed. This has resulted in the growth of a new 'class'-or call it a mafia -of touts and agents with widespread networks abroad. Burma currently has no legislation to tackle this growing menace and to protect women and girls against this mafia. The old law is outdated and inadequate. There are no legal organizations, such as in the Philippines, to safeguard women from exploitation and abuse in foreign countries. The

Burmese military is directly involved in the procurement and trafficking of women into prostitution in Thailand.³¹ No doubt Burmese women in Thailand, for instance, earn much less than their counterparts of other nationalities, although the amounts are usually much larger than the meager incomes under the junta in Burma. The increase of the numbers of women in the workforce is considered as a sign of development in Thailand, as the status of the woman is improved by her economic freedom. But this is not yet the case of Burma. There has been a considerable increase in the percentages of women in the sex industry but this is sheerly because of poverty. In respect of educated women the situation is even worse. Although the number of female university graduates in Burma has increased over the years, the lives of educated women under the junta is a tale of misery and struggle. There are hardly any jobs in Burma for educated women and they often worry about the education of their children, because schools and colleges are closed most of the time. And after graduating there is no job. Unfortunately, unemployment in Burma often means that women end up in trafficking and prostitution, while the men are often forced to join the army.

Along the India-Burma border there are more than 50,000 Chin women working in the handicraft and domestic sectors. The United Nations High Commissioner for Refugees has not yet come with any recognition or provisions. And along the Thai-Burma border there are more than one million refugees, mostly women. Although volunteer organizations do a lot to improve the situation, many refugees from Burma who currently live in camps in Thailand are women and children with little access to proper health care and education-providing a harrowing tale of uprooted humanity.

Burmese Women in Politics

In India and Bangladesh, the percentage of women in local government seats ranges around 33 per cent, but in Sri Lanka only around 2 per cent. Thailand ranks eighth out of twelve countries in the region, in spite of it being a democracy. In Thailand, 18.1 per cent of local government seats (urban seats only) and 7.8 per cent of central government seats are occupied by women. There are 8 female mayors in Thailand, 44 women in the Thai National Parliament, 22 in the Senate and another 22 in the House of Representatives. Only 3.5 per cent of the world's cabinet ministers are women. Women hold no ministerial posts in 93 countries, including Burma. The United Nations' 2000 figures show that Burma is among the small handful of countries, including Iraq, Qatar, Saudi Arabia, Sudan, and Yemen, where women hold no government posts. There have been female rulers in Burma's history, the most famous being Queen Shin Saw Pyu in the 15th century. History provides evidence of women's political and social abilities. Only in the current situation of military rule are Burma's women completely deprived of social and political participation. However, Burma has not yet given any official figures.

In family decision-making, women in Burma play a prominent role, but women in the decision-making positions in the government do not exist. The position of women in public leadership is still entirely absent. According to deeplyrooted Burmese cultural tradition, women are viewed as inferior because they are considered capable of polluting the hpon ('power aura') of men. Burmese men find it extremely difficult to accept women as their superiors, especially in politics.³² In 1922, during colonial rule, Burmese women were granted the right to vote, and in 1935 universal suffrage. This was confirmed in the 1947 Constitution -earlier than any other country in Asia.³³ But nowadays the number of parliamentary seats occupied by women has lagged far behind the numbers in other Asian countries. The reason for this is not found in tradition or customs but in the lack of institutions.

Government policies could have an impact on social norms such as the position of women and their empowerment. But unfortunately, under the military regime there is no policy or programme for the development of women in Burma. By and large this is the result of the decades of mismanagement.

In 1919, the 'Konmari' (the first All-Burma Women's Organization) was founded to promote knowledge and appreciation of women in the Burmese culture. There were also other women's organizations, such as the General Council of Burmese Associations (GCBA), the Young Men's Buddhist Association (YMBA),³⁴ and the anti-colonial boycott movements. Throughout history, women have had difficulties in competing with men for higher positions within the government and politics. This is in spite of the fact that the number of female university graduates exceeds that of men. Women's participation in the political field has been very low. There was not a single female minister during the democratic period: from 1948 to 1962, only 18 women stood for election to parliament. Would this be because of Burma's lacking political system? Or because of the lack of political freedom? The political system of the junta does not allow women participation: the government is comprised of army officers. But there have been many female politicians in countries like India and Pakistan, despite the injustices that women face in these countries. There have been female leaders and presidents in the Philippines and Sri Lanka. Then why are there so many obstacles and difficulties placed in the way of Burmese women who want to participate in politics? We find the answers in the Burmese political system, which is completely dominated by uneducated army officers loyal to the junta. It is very difficult even for civilian educated men to get significant postings, not to mention educated women. Although there has been an increase in political awareness in spite of the repressive role of the junta, political activism is more risky for women than for men, as they are exposed to rape and other brutalities. Even Daw Aung San Suu Kyi has been subject to harassment and intimidation.

The influence of women in politics has caused unease among the Burmese generals. Daw San San Nwe, a well-known Burmese writer, is one of the thousands of political prisoners held by the junta. She received a ten-year sentence in 1995 for what the junta said was "spreading information injurious to the State". In May 2000, Amnesty International listed at least 61 female political prisoners in Burma.³⁵ In April 1988, Daw San San, a prominent member of the National League for Democracy, was sentenced to 25 years for participating in a radio interview critical of the junta. Daw Ma Thida, a leading Burmese writer and medical doctor, was released from prison in February 1999 after serving six years of a 20-year sentence under extremely harsh conditions. She had been convicted of "endangering public tranquility" by distributing information on human rights abuses in Burma. The junta has now banned all Ma Thida's writings. Daw Aung San Suu Kyi was released from six years of formal house arrest in July 1995, but today is again under de facto detention in her home. Her movements and communication with Burma's peoples and the outside world are severely restricted. Daw Aung San Suu Kyi is one of the few voices in Burma that dares publicly challenge the military dictatorship. Her support for non-violent change in Burma has made her an international hero and representative of the desire of all of Burma's peoples, women and men alike, for a government that would respect their rights and strive to meet their needs.

Female political prisoners have been put to trials that fall short of international standards, as they are tried under vague security laws and legal counsel is usually denied. The most Draconian laws amongst these are the Emergency Provisions Act of 1950,³⁶ Sections 5(e) and 5(j), and the Unlawful Associations Act of 1908,³⁷ Sections 17(1) and 17(2). Sentences under these laws are inhuman and incompatible with the nature of the alleged offence, while the prison conditions violate the Jail

Manual. Most female political prisoners are being held incommunicado and are systematically being humiliated and tortured.

Conclusion

The future of women in Burma is basically founded on the restoration of Rule of Law. One can well argue that the grim stagnation and deterioration that Burma is currently facing are partly due to the denial of the role of women in national development. Women should be able to exercise their votes and elect their representatives. Women should be able to participate in legislation and other decision-making processes. They should be part of an independent and fair Judiciary with the right of review of all decisions. However, in Burma the political and judicial systems are dominated by uneducated army officers. There is no independent and fair Judiciary. Rule of Law has been replaced by rule of corrupt generals-who do not care about law and even less about gender equality or CEDAW resolutions.

The transition to democracy in Burma has to be inclusive, as it is impossible to imagine any society without women. So, democracy without women's empowerment does not mean anything and is no democracy anyway. The most critical factor in the transition to a new society in Burma is the lack of provisions in law for the empowerment of women and their participation in decision-making processes. Ironically, the Burmese male-dominated military has to negotiate the end of military rule with a woman-Daw Aung San Suu Kyi. But not only the army, also tradition and culture in Burma have consistently kept the women marginalized. In order to achieve women's participation in decision making at all levels in all fields, it is necessary to adjust laws and societal attitudes. To ensure that there is both legal and social equality, it is necessary to have a Constitution, democracy, accountability, and a strong civil society.

Endnotes

* The author is an Executive Committee Member of the Burma Lawyers' Council. He wishes to thank Peter Gutter for his assistance in writing this article.

1. The Asia-Pacific Summit of Women Mayors and Councillors (Economic and Social Commission for Asia and the Pacific, ESCAP Human Settlements), held in Phitsanulok, Thailand, from 19 to 22 June 2001. The objectives of the Summit are twofold: (1) To increase the awareness of the transformative role women play in local government and the challenges and constraints they face while working with and leading local governments; (2) To discuss follow-up regional strategies and actions to promote the participation and representation of women in local governments.

2. See: The Burma Laws Act of 1898, "The Burma Code", Published under the Authority of the Government of the Union of Burma (1955), Vol. I, Section 13(3), p. 9.

3. The Buddhist Women's Special Marriage and Succession Act of 1954, "The Burma Code", Vol. XI, pp. 2-16.

4. The Christian Marriage Act of 1872, "The Burma Code", Vol. XI, pp. 43-71.

5. The Succession Act of 1925, "The Burma Code", Vol. XI, pp. 146-265.
6. The Penal Code of 1861, "The Burma Code", Vol. VIII, pp. 1-142.
7. The Transfer of Property Act of 1882, "The Burma Code", Vol. X, pp. 138-189.
8. The Contract Act of 1872, "The Burma Code", Vol. IX, pp. 3-55.
9. The Partnership Act of 1932, "The Burma Code", Vol. IX, pp. 171-190.
10. The Burma Companies Act of 1914, "The Burma Code", Vol. IX, pp. 210-406.
11. The Bar Council Act of 1926, "The Burma Code", Vol. XI, pp. 419-425.
12. The Burma Medical Act of 1915, "The Burma Code", Vol. IV, pp. 2-8.
13. The Code of Criminal Procedure of 1898, "The Burma Code", Vol. VIII, pp. 142-427.
14. The Code of Civil Procedure of 1909, "The Burma Code", Vol. XII, pp. 1-347.
15. The Evidence Act of 1872, "The Burma Code", Vol. XII, pp. 414-468.
16. The Burma Immigration (Emergency Provisions) Act of 1947, "The Burma Code", Vol. I, pp. 39-44.
17. The Suppression of Prostitution Act of 1949, amended in 1956 (in Burmese). "The Burma Code", Vol. IV, pp. 156-161.
18. The Child Law of 1993 (SLORC Law No. 9/93). See: "Laws, Rules, Regulations, Orders and Notifications, 1993" (in Burmese). Rangoon: State Law and Order Restoration Council, 1993, pp. 3-44.
19. Daw Myint Myint, "Dear Sayama". In: "Burma: Voices of Women in the Struggle", edited by the Alternative ASEAN Network on Burma. Bangkok, June 1998, p. 26.
20. Peter Gutter, "Law and Religion in Burma". Legal Issues on Burma Journal, No.8, April 2001, pp. 4-5 ("Religious and Customary Law").
21. The Special Marriage Act of 1872, "The Burma Code", Vol. XI, pp. 109-117.
22. The Burma Divorce Act of 1869, "The Burma Code", Vol. XI, pp. 73-100.
23. The Guardians and Wards Act of 1890, "The Burma Code", Vol. XI, pp. 122-138.
24. On 18 December 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This 30-article Convention sets out in legally binding form internationally accepted principles and measures to achieve equal rights for women everywhere. Opened for signature on 1 March 1980, the Convention would enter into force after 20 States had consented to be bound by its provisions, either through

accession or ratification.

25. "The Union of Myanmar Report on Convention on the Elimination of All Forms of Discrimination Against Women". Rangoon: State Peace and Development Council, March 1999, pp. 40-41 ("Reservation").
26. The Myanmar National Committee for Women's Affairs is comprising deputy ministers of related ministries, representatives of the Attorney-General and the Chief Justice, and leaders of women's non-governmental organizations -however, all of them created by the junta. The Committee has no decision-making power.
27. B.K. Sen, "Toward Transition With Rule of Law". *Legal Issues on Burma Journal*, No. 8, April 2001, p. 21. See also: The Village Act of 1908, "The Burma Code", Vol. VI, pp. 13-28; and, The Towns Act of 1907, "The Burma Code", Vol. VI, pp. 28-34.
28. The Apprentices Act of 1850, "The Burma Code", Vol. V, pp. 180-185.
29. The Workmen's Compensation Act of 1924, "The Burma Code", Vol. V, pp. 232-257.
30. The Mines Act of 1924, "The Burma Code", Vol. V, pp. 191-214.
31. See: "A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand". New York: Human Rights Watch/Asia, 1993.
32. Yawnghwe, Eugene Thaike, "The Women of Burma: Holding Up Two-Thirds of the Sky". In: "The Plight of Burmese Women". Mae Hong Son, Thailand: Burmese Women's Union, 1995, pp. 41-42.
33. Sylvia A. Chipp and Justin J. Green, "Asian Women in Transition". University Park and London: Pennsylvania State University Press, 1980, p. 21.
34. The Young Men's Buddhist Association, with a special branch for women, was founded in Arakan in 1902.
35. "Human Rights Yearbook: Burma 1999-2000". Washington, D.C.: National Coalition Government of the Union of Burma, August 2000, pp. 281-298 ("Women Political Prisoners In Myanmar").
36. The Emergency Provisions Act of 1950, Act No. 17/50 (in Burmese). "The Burma Code", Vol. II, pp. 244-249.
37. The Unlawful Associations Act of 1908, "The Burma Code", Vol. II, pp. 201-205.