

ADVANCING
GENDER E^QUALITY

WITHIN A FEDERAL
GOVERNANCE MODEL
IN MYANMAR

UN WOMEN 2017



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Advancing Gender Equality within a Federal Governance Model in Myanmar

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EXECUTIVE SUMMARY

PART 1

Part 1 of the report begins with a brief background of Myanmar's political situation and the debate that led to the positing of a federal model as the most appropriate mechanism of governance for Myanmar as it moves towards democracy and peace. Part 1 also includes a literature review and a brief overview of the report methodology.

In 2015, after over 50 years of military governance, the National League for Democracy formed a government led by U Htin Kyaw as President and Daw Aung San Suu Kyi as State Counsellor. A new model of governance must be negotiated, one that provides Myanmar citizens with pride in the nation-state, that fully recognizes Myanmar's diversity in ethnicity, language and culture and that secures and guarantees the human rights of all, including women and girls. A federal model, a likely choice, would enable states and regions to enjoy constitutionally guaranteed autonomy over certain legislative and policy areas while sharing power in other areas in accordance with agreed rules.

Gender equality issues are more effectively addressed at the start of a process of institutional and constitutional restructuring and reform. In Myanmar, therefore, a unique opportunity has arisen as a new governance model is negotiated: an opportunity to introduce mechanisms to secure the rights of women and to advance gender equality. This report contributes to that process by providing an analysis — the first conducted to date — of gender and federalism in the Myanmar context.

As Myanmar advances towards further democratization, peace and economic and social development, it is crucial that it strongly embeds the principles of gender equality and women's rights in its legal foundations. Therefore, this report aims to identify, within different models of federalism, the opportunities and drawbacks of each model for advancing gender equality. Further, this report utilizes examples from other jurisdictions in order to propose mechanisms that can be developed to ensure the advancement of rights for women and girls.

PART 2

Part 2 of the report considers federalism in the Myanmar context. It begins with a discussion and overview of the current (nominally federal) governance model operating in Myanmar. It introduces and defines the concept of federalism and the models of federalism adopted in other countries, particularly those with geographic, cultural and political similarities to Myanmar. It considers, in general terms, the key gender equality issues that must be negotiated in different federal models of governance.

The current governance model in Myanmar, framed by the *Constitution of the Republic of Myanmar* 2008, can advance gender equality and women's right to a certain extent only. It is a centralized model of governance, with most power vested in the executive, legislature and judiciary arms of the Union government. Limited powers and functions are devolved from the Union government to the 14 states and regions, the one self-administered division and the five self-administered zones.

Federal models vary greatly. Some confer a large amount of power in a central government to regulate the country; others grant more autonomy to states and regions. Some impose clear divisions in the powers of the central government and the states and regions, while others have overlapping or shared powers. Four generic models of federalism can be identified: **unitary federalism**, in which the central government retains greater rights and resources and dominates the formation of policy and law; **dual federalism**, in which a complete set of institutions is established at both the central and the state/region levels, each with separate clearly defined functions; **competitive federalism**, in which there is a complete set of institutions at both the central and the state and region levels, each with separate, clearly defined functions (the states and regions compete for resources and citizens); and **cooperative federalism**, in which there is joint decision-making between the central government and the state and region governments.

There is no common theory about the impact of different federal models on the advancement of gender equality. Some gender scholars argue that federalism is not an effective model for advancing gender equality on the basis that it limits central government power and fragments its ability to implement redistributive social policies that benefit women and girls. In contrast, other gender scholars argue that a federal model can enhance the advancement of gender equality by opening multiple access points for gender equality advocates, by creating positive competition between states and regions and by establishing local governments that women can more easily access and participate in.

The effectiveness of a federal model of governance in advancing gender equality depends on a range of factors, including the political will of central, regional and state governments; the size of the population; the ethnic and cultural diversity of population; the presence or absence of conflict; the level of economic wealth; and the strength of traditional practices and cultural norms that are not in accord with gender equality.

PART 3

Part 3 examines, thematically, the key gender equality issues arising from the introduction of a federal model of governance in Myanmar.

BILL OF RIGHTS

In a federal model, because there are multiple governments, it is crucial that universal human rights norms — including a guarantee of equality and non-discrimination — are enshrined in the national constitution. This ensures that each state and region government is obliged to comply with international norms and, if there are state and region constitutions, it ensures that they too incorporate guarantees of universal human rights norms.

KEY RECOMMENDATIONS

- ✓ Expand the equality and non-discrimination provisions in the Constitution to include substantive equality and direct and indirect discrimination.
- ✓ Develop temporary special measures in legislation to authorize special measures in all areas of women's lives.
- ✓ Include guarantees of an equal right to health, education, social services, social security, equal representation in public office and equal rights in all aspects of employment.

DIVISION OF LAW-MAKING POWERS AND ADMINISTRATIVE FUNCTIONS

The division of law-making powers and administrative functions between the Union government and the state and region governments must be negotiated. This division is very important to the advancement of gender equality, and it is critical that women's groups work together to consider which level of government should have jurisdiction over which powers and functions. Many laws in Myanmar discriminate against women, including in criminal, family and employment law. There are many services that are inadequate, including public goods and services, social welfare and benefits, health, education and support for victims of violence. Myanmar women must determine whether laws enacted and programmes delivered by state and region governments are preferable or whether, in certain areas, it is more desirable for the Union government to set and enforce uniform standards. This report outlines a series of options for division in key areas and discusses the advantages and disadvantages of each.

Family law that provides for equal rights in the family is important for the advancement of gender equality. Family law has historically granted men enormous power in the family; discrimination against women and girls in family law systems places them in a subordinate position to men within the family. This imbalance is replicated in economic affairs and in all areas of decision-making in the public sphere. It is crucial, therefore, to carefully consider the gender equality implications of the different approaches to the division of law-making powers and administrative functions in family law and inheritance within federal models and to negotiate that division prudently.

Option 1 is to give the Union government the power to enact a uniform family law that the states and regions implement. This approach is positive for gender equality — if the uniform law meets the standards of good practice in family law and accords with international standards, particularly Article 16 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Option 2 is to divide law-making powers and administrative functions, enabling the Union government to legislate in some areas of family law and state and region governments to legislate in other areas. Option 3 is for the Union government and the state and region governments to share law-making powers and administrative functions so that the governments must negotiate the rules of family law. This approach may result in the Union holding significant power over decisions, particularly if fiscal authority resides with the Union. Option 4 gives states and regions complete autonomy over all aspects of family law. If states and regions remain committed to traditional practices and religious systems that discriminate against women, this option will likely make it difficult for women to negotiate reform and to achieve equal rights in this key area.

KEY RECOMMENDATIONS

- ✓ The Union sets minimum standards for family law in accord with Article 16 of CEDAW, and state and region governments have autonomy over family law and implementation outside of those minimum standards.
- ✓ Mechanisms should be established to ensure customary laws adhere to formal law standards.

The legal regulation of education and its effective delivery are critical to advancing gender equality. Educating women and girls optimizes the use of labour in an economy and raises productivity. It reduces poverty, increases life expectancy, improves infant mortality and morbidity, increases formal savings, increases agricultural productivity, grows small businesses and leads to greater investments in the human capital of children, improving the productivity of the next generation of workers.

Option 2 is to divide responsibility for the regulation and delivery of education between the Union and the region and area governments. It may be advantageous for the Union to set basic standards in relation to the delivery of education, ensuring that a general curriculum is delivered alongside a local curriculum so that ethnic students have guaranteed access to the curricular offered to the Bamar majority. Option 2 is to share responsibility between the Union and the region and area governments for the delivery of education, which may be advantageous for the advancement of gender equality because Union involvement may be necessary to raise

the standard of education throughout the country. Option 3 gives states and regions complete autonomy over the regulation, administration and delivery of education. Each state and region has diverse needs, and this approach gives each control over the content of education, and can deliver, for example, education in local languages. Further, it can ensure the provision of positive representations of minority history, culture and identity. Safeguards must be introduced, however, to ensure that there is consistent access to education for girls and women across the country so that they are not marginalized from opportunities accessible to the majority group.

The legal regulation of health and its effective delivery are critical to the well-being and equality of women and girls. Good health contributes to poverty reduction, fulfilment of productive capacity and raised quality of life.

KEY RECOMMENDATION

- ✓ The Union government and state and region governments share the responsibility for the regulation and delivery of education.

Option 1 is to divide the responsibility for the legal regulation and delivery of health care between the Union and state and region governments. Careful consideration of the implications of different divisions must be made, particularly considering the need to coordinate law and health service delivery. Option 2 is to share the responsibilities of the legal regulation and delivery of health care so that the Union and states and regions must negotiate and collaborate. A state or region may not have the capacity to develop a comprehensive health-care system, so it might be necessary for the Union to work with the region or state to develop an appropriate framework. Option 3 gives the states and regions complete autonomy over the legal regulation and delivery of health care. Each state and region has different health needs, particularly in relation to women. Each state and region must be assured of adequate revenue and technical support in order to ensure the capacity to develop a comprehensive health-care system.

Women's participation in the economy, as employees in the formal and informal employment sector and as formal and informal business operators, is critical to Myanmar economic prosperity and to advancing gender equality. Myanmar needs a strong legislative framework for employment relations that cover employees in the informal sector. This is because a sizeable proportion of women's economic activity occurs in the informal sector in small-scale fisheries, in food production, in the garment industry, in agriculture, in hospitality and in tourism. Women are also active in small businesses, particularly in the markets that operate in all parts of Myanmar making and selling handicrafts such as thanaka, wood carvings, tapestry, puppets and jewelry and growing and selling produce. The lack of laws protecting the rights of workers in either the formal or informal economy is problematic for women who are subject to discrimination, sexual harassment and inadequate maternity protections.

KEY RECOMMENDATIONS

- ✓ Union government and state and region governments share the responsibility for health care delivery.
- ✓ Union sets legal standards for the availability of services, such as family planning, maternity care and abortion.

The challenges for women operating small businesses in the informal economy include unstable markets, inadequate and unsafe transportation, difficulty in transacting with the formal sector, low financial inclusion rates, lack of access to formal or affordable finance and lack of information, skills and training on business operations. Government and donor agency grants typically require business registration for eligibility, and banks require formalization for lending. Women in the informal sector are often unaware of the benefits of formalizing their business, which include easier access to finance, markets, training and networks.

Option 1 gives the Union government the power to enact a uniform law in relation to employment relations, establishing minimum standards to which all states and regions must adhere to. Such standards include a minimum wage, a guarantee of equal pay, maternity and parental leave, the right to organize, equal conditions of work, occupational health and safety standards and sexual harassment protections. The Union government is also given the power to enact a uniform secured transactions law so that women can access loans more easily. This can be a positive approach for gender equality if the uniform laws meet and are in accord with international standards of good practice in employment, particularly Article 11 of CEDAW. In addition to ensuring that women and girls are not discriminated against in employment laws, this approach will ensure uniformity in the formal law throughout Myanmar. Option 2 gives states and regions complete autonomy over law-making and administrative functions in employment law and business opportunities. This option may accord with the desire of states and regions to have autonomy over their economic growth and empowerment. It is beneficial to afford state and region governments the power to regulate the registration of businesses and to issue business licences in accord with local conditions. Safeguards, however, must be introduced in order to ensure that consistent minimum standards of employment are introduced throughout Myanmar.

KEY RECOMMENDATIONS

- ✓ The Union government and state and region governments divide the law-making and administrative functions in employment relations.
- ✓ The Union government sets the minimum standards for employment relations in accord with Article 11 of CEDAW.
- ✓ State and region governments are responsible for simplifying business registration, business licences, financial inclusion policies and delivering programmes to facilitate women's entry into the formal sector.

The provision of public goods and services, such as transportation, clean water supply, energy, sanitation and communications, are critical not only to sustainable economic growth and poverty reduction but also to advancing gender equality. The failure to provide adequate public goods and services impacts disproportionately on women and girls. For example, the failure to provide sustainable energy sources and accessible water supplies increases women's domestic work and reduces their time and opportunities to generate income. Dividing the responsibility for the delivery of public goods and services between the Union and the state and region governments is a positive approach for advancing gender equality. Local governments are well-suited to

providing smaller local services such as fire protection, trash pickup and street sanitation, safe market facilities, libraries, parks and recreation, local roadways, local transport, street lighting, public toilet facilities and local drinking water outlets. Public goods and services are shared and required by the entire Myanmar population. These goods and services (e.g. regional and national highways, airports, rail services and the national electricity grid) are costly to install and require significant infrastructure, which may be best managed centrally. However, safeguards must be introduced in order to ensure consistent provision throughout Myanmar.

KEY RECOMMENDATIONS

- ✓ The delivery of public goods and services is divided between the Union government and state and region governments.
- ✓ The Union government is responsible for funding and organizing large infrastructure projects; state and region governments are responsible for infrastructure maintenance.
- ✓ State and region governments are responsible for smaller local services.

FISCAL ARRANGEMENTS

Fiscal arrangements are particularly central to the effective and efficient functioning of a federal model of governance and key to the advancement of gender equality. State and region governments must have access to sufficient revenue in order to effectively undertake the functions allocated to them. The governments must also have the authority to make decisions about how to utilize the revenue. The amount of revenue allocated to each state and region must be linked to the service provision responsibilities and functions of each so that they can meet their responsibilities and deliver on promises they have made.

The report recommends five approaches to fiscal arrangements to advance gender equality. First, the adoption of fiscal equalization, a process of sharing revenue between states and regions in order to ensure that each has capacity to provide an equal level of services to residents. Equalization enables essential services for women, including access to health-care facilities, housing, sanitation, access to drinking water, electricity, social welfare and services for victims of violence to be equally provided throughout the country. Second, a means of sharing revenue from natural resources that respects ethnic minorities' views regarding control over the management, production and profits of resources located in their states and regions. Third, a model of taxation that enhances gender equality and does not place unequal and disproportionate burdens on women. Fourth, gender budgeting analysing actual expenditures and revenue on women and girls as compared to expenditures on men and boys and rectifying any inequalities. In a federal model, gender budgeting should occur at the Union and state and region levels and should be mandated by law. Fifth, effective due diligence must be required of businesses at all levels in order to ensure that businesses and investments are conducted responsibly within a culture of respect for human rights, democratic governance and in forms that will advance the achievement of gender equality.

The UN Guiding Principles for Business and Human Rights can provide standards for the Union government to legislate for all states and regions.

In addition to ensuring that businesses respect human rights, businesses can be compelled to fund infrastructure or public services in the region or community in which they operate (or beyond). Infrastructure projects identified by local women can be prioritized, such as providing every household with a toilet, establishing maternal health-care facilities or establishing family planning centres. Alternately, businesses can be encouraged to fund infrastructure or public services as part of their corporate social responsibility.

KEY RECOMMENDATIONS

- ✓ Introduce clear, transparent, equitable methods of revenue collection and distribution.
- ✓ Strengthen the model of taxation by first introducing a greater tax-free band for all earners, coupled with rethinking tax credits for dependent spouses so as not to discourage female spouses from entering the paid workforce. Second, extend the tax-free benefit for small- and medium-sized businesses.
- ✓ Introduce fiscal equalization or fiscal transfers that ensure gender equality measures can be distributed uniformly throughout the country.
- ✓ Consider the use of gender equality incentives, such as extra funding for meeting gender equality targets.
- ✓ Introduce gender budgeting at all levels of government.
- ✓ Require, by law, due diligence by businesses and companies in accord with the UN Guiding Principles for Business and Human Rights.
- ✓ Require companies and state-owned enterprises operating to extract natural resources to fund gender equality infrastructure projects and to meet gender equality employment targets.

REPRESENTATION OF WOMEN IN PUBLIC OFFICE

Women need better representation in public office in Myanmar at all levels, although this improved at the Union, state and region levels in the 2015 general election. Equal representation of women is important in the Union, state and region parliaments, as ward/tract administrators and in the non-elected roles of administration at the local level in villages and townships. Women's equal representation ensures that governance and decision-making reflect the views and experiences of Myanmar women, which will lead to better outcomes in many policy areas, including children's education, access to drinking water and caring for the sick and elderly. It is unlikely that law and policy developed by men alone in these areas would fully and effectively reflect and respond to issues in these areas. It is therefore important that equal political representation be achieved within and throughout a federal model of governance.

A federal model provides women with many more opportunities to participate in governance because there are more positions available at the state and region level. Women may also find it easier to participate in state and region parliaments, as they are geographically closer to their homes, thus lessening the time away from domestic responsibilities and reducing travel (and therefore also reducing associated security issues). Women may also be more comfortable in decision-making roles that are close to the community in which they live; at the same time, other village and community members may be more accepting of women filling public roles in which there is less power and authority vested. Lower-level governance roles may provide a

training ground for women who may then have the confidence and skills to run for the Union parliament.

The report recommends the following mechanisms to ensure greater representation of women in public office in a federal model. First, a gender quota for Union, state and region parliaments. Second, reform of the *Ward and Village Tract Administration Law 2012* to ensure that women can vote and stand for election. The current system of voting for the position of administrator is restricted to heads of households, effectively excluding women from both voting and from being elected. Third, training in a variety of skills, both to equip women to enter into elections as candidates and to participate meaningfully in national and local governance bodies if they are elected, is a critical measure to complement quotas and other measures. This can prepare women to take up the greater opportunities for political representation offered by a federal model.

KEY RECOMMENDATIONS

- ✓ Introduce gender quotas for Union, state and region elections mandated in the Constitution.
- ✓ Reform the Ward and Village Tract Administration Law 2012 to ensure that women can vote and run for the role of town administrator.
- ✓ Provide women with training to equip them to serve in public office.

SECURITY OF WOMEN AND GIRLS

Violence against women and girls is pervasive and widespread in Myanmar, including sexual violence in conflict. Violence impacts on all areas of the lives of women and girls, including health, housing, education and employment. Violence causes serious physical injuries and can lead to depression, post-traumatic stress and other anxiety disorders; sleep difficulties; eating disorders; and suicide attempts. As a result, women may be unable to work or pursue educational opportunities, and may have limited ability to care for themselves and their children. Therefore, strong measures must be adopted and integrated into a federal model of governance in order to ensure a uniformity of legal protections and service delivery across all of Myanmar. The Constitution should prohibit violence against women; the Union should enact a national prevention of violence against women law. Such provisions and laws should prohibit all forms of domestic and sexual violence, sexual harassment and any other form of violence and should provide targeted funding for victim support programmes (e.g. counselling facilities, specialized police units, the creation of shelters and targeted medical facilities).

KEY RECOMMENDATIONS

- ✓ Prohibit violence against women in the Constitution.
- ✓ Fast-track the adoption of a CEDAW Compliant Prevention and Protection of Violence against Women law.
- ✓ Remove Constitution Section 445, which absolves the state for any responsibility for crimes committed against women during conflict.
- ✓ Target budget spending on the provision of services for victims of violence, including shelters, medical facilities and counselling services.

INSTITUTIONAL PROTECTION OF WOMEN'S RIGHTS

The establishment of women's ministries, units or departments, which create entry points into government for gender equality issues, are an important mechanism in a federal model. A federal model maximizes the opportunities to create women's ministries by establishing more governments and therefore creating more entry points. Women's ministries should be established by law, with dedicated resources and clear and broad functions embedded in authorizing legislation. The creation of women's ministries in Union, state and region governments will give prominence to gender equality issues, thereby providing greater opportunity for gender equality advocates to work within the state.

KEY RECOMMENDATIONS

- ✓ Establish women's ministries in the Union and state and region governments through the Constitution or through legislation.
- ✓ Establish through legislation a broad mandate for the women's ministries.
- ✓ Identify an adequate, fixed and regular budget for women's ministries.

ESTABLISHING AN INDEPENDENT COURT SYSTEM

A federal model must include an independent court system in the Union, states and regions. An independent, accessible and fair judiciary is critical for protecting the rights of citizens enshrined in the national constitution and laws, for reviewing legislation for its compliance with the constitution and international law (including CEDAW), and holding the state accountable for its actions in relation to the functions assigned to it by the constitution and other legislation.

An independent judiciary is characterized by an independent process of appointment and a secure tenure of appointment. Therefore, this report recommends that the President be required to consult more broadly for judicial appointments to the Supreme Court and High Courts and to establish a more consultative approach to the appointment of judges to the Constitutional Tribunal. Additionally, the report recommends that the executive should only be able to remove judges in cases of gross misconduct.

KEY RECOMMENDATION

- ✓ Establish a consultative approach for the independent appointment of judges at all levels.

PART 1:

INTRODUCTION AND BACKGROUND

BACKGROUND CONTEXT

In 2008, after over 50 years of military governance and 65 years of ethnic conflict, Myanmar took important steps towards democratization, peace building and economic and social development when the military government adopted the *Constitution of the Republic of Myanmar* as part of its roadmap to democracy. The Constitution introduced a nominally federal, centralized, model of governance. In 2011, the military junta was dissolved, a new quasi-civilian Union parliament was convened and a gradual process of decentralization commenced under the leadership of U Thein Sein, as President.

On 8 November 2015, in the first general election since 1990, the National League for Democracy, took an outright majority in both houses of the Union parliament, winning 255 of the 330 elected seats in the 440-member lower House of Representatives (110 seats are reserved for the military) and 135 of the 168 elected seats in the 224-member upper House of Nationalities (56 seats are reserved for the military). The National League for Democracy formed a new government, led by U Htin Kyaw as President and Daw Aung San Suu Kyi as State Counsellor.

Peace talks, which began in 2011 between the government, the military and the ethnic armed organizations, are advancing under the new government. A new model of governance that provides Myanmar citizens with pride in the nation-state, that fully recognizes Myanmar's diversity in ethnicity, language and culture and that secures and guarantees the human rights of all — including women and girls — must be negotiated. Regional leaders, civil society, some government members and international experts have proposed a decentralized model in which powers and functions are devolved to the local and regional levels, in which local- and regional-level representatives have a prominent role in the central government, and where new central and regional institutions are established.

A federal model, a likely choice, would enable regional and state governments to enjoy constitutionally guaranteed autonomy over certain legislative and policy areas while sharing power in other areas in accordance with agreed rules. The government and the military have indicated a new commitment for a proper federal organization in Myanmar,¹ the ethnic armed groups have acknowledged federalism as a realistic alternative to secession,² and state and region governments and civil society have responded favourably to the possibility of introducing a federal model of governance.³

Federations are a popular choice in countries with large populations (such as India), large geographic areas (such as Canada) or in countries that are diverse in ethnicity, culture and religion (such as Belgium). In particular, a federal model is regarded as an effective tool, through decentralization and the granting of relative autonomy to regions or minorities, to end internal conflict while keeping a country together as a nation.⁴ Myanmar's ethnic minorities make up an estimated 30 to 40 per cent of the population; ethnic states and regions occupy approximately 57 per cent of the total land area along most of the country's international borders. Myanmar's history of conflict between the former military government and the various ethnic minorities, coupled with the recognized need by all parties for a peaceful solution to enhance Myanmar's reform process and future prosperity, make federalism a promising choice as the governance mechanism.⁵

SCOPE AND PURPOSE

Gender equality affords women important rights in conformity with international obligations. Further, it enhances productivity, economic growth and social conditions for all. Research indicates that advancing gender equality results in healthier families; better education for children; increases in family income, savings and reinvestment; safer communities; and a stronger economy. Gender equality issues are more effectively addressed at the start of a process

1 The National League for Democracy has committed publicly to “work to ensure a fair distribution across the country of the profits from natural resource *extraction*, in accordance with the principles of a federal union.” See also comments made by the Union Solidarity and Development Party <http://www.mmmtimes.com/index.php/national-news/21839-former-president-pledges-usdp-support-for-federal-union.html>. See also the Paper submitted by the Tatmadaw to the Union Peace Dialogue (January 2016).

2 Helene Graves and Mikael Graves, “Integration and Power-Sharing: What are the Future Options for Armed Non-State Actors in the Myanmar Peace Process?” (2015) 4(1) *International Journal of Security and Development* 57.

3 Interviews conducted by the author with various civil society representatives indicated strong support for a federal model. See also Alexander Niedermeier and Wolfram Ridder, *Decentralization, Federalism and Democracy. Politics, Governance, and Public Administration in National and Subnational Settings. Experiences from Germany, Asia and Beyond* (Hanns Seidel Foundation, 2nd ed, 2016) 93. See also Hanns Seidel Foundation, *Research Report: Seminar on Federalism, Peace Process and Coordination between Political Parties and CSOs* 2017, 3, where 80 per cent of the 200 participants from different regional political parties, civil society organizations and other representatives from Mon state agreed that a federal model is important to resolve the conflicts in Myanmar.

4 Niedermeier note 3, 15.

5 Achim Munz and Micael Siegner “Federalism in Myanmar: Status Quo, Positions and Outlook” (2012) *Federalism* 291, 291.

of institutional and constitutional restructuring and reform.⁶ As a new governance model is negotiated, a unique opportunity has arisen in Myanmar to introduce mechanisms to secure the rights of women and to advance gender equality.

State architecture is critically important for the advancement of gender equality because of the state's centrality to law-making, to revenue and resource collection and distribution and to policy development and implementation. The state decides who is a citizen, who can vote, the form of the electoral system, who has access to education, which health concerns are prioritized and which public services are offered (and to whom).

The aims of this report include identifying different models of federalism, exploring the opportunities and drawbacks of each for advancing gender equality, and proposing mechanisms that can be developed and adopted within a federal model of governance. The report utilizes examples from other jurisdictions that ensure the advancement of gender equality and the rights of women and girls.

LITERATURE REVIEW

A review of scholarship analysing gender and federalism in the Myanmar context identified no literature focusing specifically on gender and federalism in Myanmar; this report will comprise the first comprehensive analysis of federalism in Myanmar from a gender perspective. There are two bodies of scholarship that are relevant to this report and are reviewed in this section. First, there is a small body of literature on federalism in Myanmar; this literature does not have a particular focus on gender. Second, there is a large body of literature on gender and federalism in the global context. Therefore, the literature reviewed in this section is presented in the following two thematic sections: The first section includes a brief overview of the small body of literature that analyses federalism in the Myanmar context. The second section considers a selection of the most recent and significant literature on gender and federalism in the global context without any specific focus on Myanmar. The selected works in both thematic sections provide rich information on the benefits and drawbacks of federal models of governance and highlights the key issues to consider in developing strategies to secure women's rights and the advancement of gender equality within different federal models.

LITERATURE REVIEW OF FEDERALISM IN MYANMAR

Much of the small body of scholarship on federalism in Myanmar focuses on the peace process. Some level of autonomy for the ethnic minority groups is essential for peace and that federalism is the most appropriate model of governance to achieve this. This scholarship is useful to this report primarily to highlight the security issues faced by ethnic minority women during conflict, the place and role of ethnic minority women within a federal structure, and the opportunities that federalism offers for the peace process.

6 Louise Chappell, "Nested Newness and Institutional Innovation: Expanding Justice in the International Criminal Court" (2011) in Mona Krook and Fiona Mackay (eds) *Gender, Politics and Institutions: Towards a Feminist Institutionalism* (Palgrave: 2011) 163, 167.

The Tatmadaw (the Myanmar armed forces), in a paper submitted to the Union Peace Dialogue in January of 2016,⁷ outline a military perspective on a future federal model for Myanmar. They argue in favour of a federal model primarily because they see the development of the nation and the prosperity of its citizens as dependant on the unity of the different ethnic groups living in Myanmar. The model they support has a strong Union government led by the Bamar people, which they argue is central to Myanmar's successful development. They maintain that the Union should have legislative power over defence, national security, peace, foreign affairs, banking, finance, foreign trade, tax and revenue and import tariffs. They contend that state and region governments should have legislative power over law and order, prison and rehabilitation centres, public health, education, agriculture, land, forestry, internal trade and land and crop taxes. They recommend that states and regions should be organized and divided based on geography rather than on ethnicity; that all ethnic groups should have equal rights; that the Union, state and region governments should share power; and that states and regions should develop equally.

In 2012, Achim Munz and Michael Siegner⁸ examined and compared the views of political leaders prior to the 2015 election with ethnic minority groups regarding the introduction of a federal model in Myanmar as a means of achieving peace and encouraging development. After reviewing the history of governance in Myanmar and providing a detailed description of the current governance model, Munz and Siegner identified a strong push from ethnic minority groups and growing acceptance by political leaders towards a federal model. While political leaders' priority is negotiating a ceasefire, ethnic minority leaders view peace as contingent on decentralization, cemented through constitutional change.

Although they praised moves by political leaders to strengthen administrative capacities at the regional and state levels, the authors concluded that further decentralization is necessary, decentralization that grants more autonomy to ethnic minorities in the states and regions before peace can be achieved. Nehginpao Kipgen⁹ also focuses on the peace process and identified several factors critical to achieving a lasting peace, including the establishment of a federal model, demilitarization, economic reconstruction (involving citizens at the grass-roots level and in development processes), and rehabilitation and integration of armed ethnic groups. Additionally, Myanmar must, he argues, install mechanisms to protect human rights and instigate systematic programmes to protect women and minorities.

Focusing on the need to share the revenue from Myanmar's natural resources, Andre Bauer, Paul Shortell and Lorenzo Delesgues¹⁰ argue that the efficient, fair and transparent distribution of Myanmar's natural resource income is central to a successful federal model. They identify seven key steps for successfully sharing natural resource income in Myanmar, including: distributing revenue such that each state and region's financial needs are met; identifying which revenue streams are to be shared; distributing revenue between states and regions using an indicator-

7 Tatmadaw, *Basic Principles on Federalism* (Unofficial Translation). Paper submitted in January 2016 to the Union Peace Dialogue.

8 Achim Munz and Micael Siegner "Federalism in Myanmar: Status Quo, Positions and Outlook" (2012) *Federalism* 291.

9 Nehginpao Kipgen, "Ethnic Nationalities and the Peace Process in Myanmar" (2015) 82(2) *Social Research. An International Quarterly* 399-425.

10 Andre Bauer, Paul Shortell and Lorenzo Delesgues, *Sharing the Wealth: A Roadmap for Distributing Myanmar's Natural Resource Revenues* Natural Resource Governance Institute, 2016.

based approach; sharing resources with traditional and local authorities, landowners and residents (not just state and region governments); improving spending incentives; installing transparency and oversight mechanisms; and negotiating a fair process and a neutral venue for implementation.

LITERATURE REVIEW OF GENDER AND FEDERALISM

A significant body of gender scholarship explores the capacity of different federal models to advance gender equality. While some scholarship focuses broadly on the opportunities and barriers created by federal models, most focus on particular gender equality issues in federal states. Such issues include the institutionalization of women's departments in government structures, women's political representation (particularly using gender quotas), child care, reproductive rights and fiscal arrangements.

Gwendolyn Gray,¹¹ broadly examining the advantages and disadvantages of federal models, argues that historically, gender equality advocates have not supported federalism as the most effective governance model to advance women's rights, because it is a system that restricts central government scope and therefore hinders the path of progressive social change. However, more recent gender scholars have argued that federalism does have capacity to facilitate innovative policies, legislation and measures to advance gender equality. Gray focuses on Canada and Australia as comparative examples, and reviews studies in those two countries. She concludes that there are mixed results as to the capacity of federalism to advance gender equality. She argues that interacting political, economic, institutional, social and cultural factors influence progress towards gender equality and therefore it is difficult, perhaps impossible, to identify the model of governance as the key factor influencing positive change.

Federalism also, she argues, sometimes obstructs and sometimes advances the recognition of women's rights, depending on the model adopted. For example, she concludes that in Australia, which is a highly centralized model of federalism, gender equality reform is more likely to be implemented successfully if driven by the central government because it has greater power and resources to implement reforms.

Comparing Germany and Austria and focusing on women's policy institutions (e.g. ministries and departments of Women's Affairs), Sabine Lang and Birgit Sauer¹² consider whether a federal model, in particular a cooperative federal model, influences the creation, strength or effectiveness of women's policy institutions. They argue that federalism facilitates the advancement of gender equality by creating opportunities to establish women's policy institutions at the central, regional and local levels.

Factors other than federalism, however, play a significant role in determining whether women's policy institutions are established at all levels of the federal state. Other factors also determine the strength of the powers, functions and responsibilities that such institutions are afforded. For

11 Gwendolyn Gray, "Federalism, Feminism and Multilevel Governance: The Elusive Search for Theory" in (eds) Melissa Haussman, Marian Sawyer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010) 19.

12 Sabine Lang and Birgit Sauer, "Does Federalism Impact Gender Architectures? The Case of Women's Policy Agencies in Germany and Austria" (2012) 43(1) *Journal of Federalism* 68.

example, the greater the role and position of left/centre political parties in the government and the greater the economic stability of a country, the more likely that women's policy institutions, with significant powers, will be created and sustained.

Susan Franceschet and Jennifer Piscopa,¹³ comparing federal Argentina with unitary Chile, explore the two countries' protection of women's reproductive rights, specifically the availability of contraceptive options. In both countries, the central government gave the same mandate — free and available contraceptive options — but achieved different results in each. The authors begin by noting that decentralization is present in both countries, enabling significant subnational autonomy over the funding and delivery of health care.

However, although resistance to the availability of contraception occurred in both (Catholic) countries, it was driven by morality and conservatism rather than by fiscal constraints, Argentina's federal model enabled greater resistance to the central government's mandate because there were more incentives for politicians to follow local imperatives and pressures, as they were less aligned to and dependent upon, the central government. In contrast, in Chile there was an incentive for the regional leaders to comply with the central government, because by the nature of the model, political power resides in the central government. The authors conclude that federalism creates opportunities for conservative local leaders to resist progressive national policies and for non-conservative local leaders to resist conservative central government mandates.

Fernanda Correa¹⁴ examines gender quotas in Mexico and their relationship to the country's federal model. The central government mandated the introduction of gender quotas at all levels of elected government, but left the states free to determine the form of the gender quotas. The result was an array of forms of quotas, resulting in uneven gender representation in public office across the country. However, although a lack of enforcement in some states appeared to have led to initially poor results, the authors note that the number of women in elected public office gradually increased and, over time, women began to gain seats in states without enforcement. The authors conclude that, although federalism resulted in a lack of uniformity in the early implementation of gender quotas, federalism eventually facilitated consistency in gender quotas as successful states provided an example to other states with positive outcomes for gender representation.

Three authors use different examples to illustrate how adept gender equality advocates have become at negotiating the federal structures in their countries in order to achieve positive gender equality outcomes. Deborah Brennan,¹⁵ focusing on childcare services in Australia, argues that the federal model provides women with both political opportunity structures and constraints. Gender equality advocates have played a 'two-level' strategy by lobbying the central government when it is progressive and lobbying the states when the central government is conservative.

13 Susan Franceschet and Jennifer Piscopa, "Federalism, Decentralization and Reproductive Rights in Argentina and Chile" (2012) *Journal of Federalism* 1.

14 Fernanda Correa, "Federalism and Gender Quotas in Mexico: Analysing Proprietario and Suplente Nominations" (2014) 50(3) *Representation* 321, 322.

15 Deborah Brennan, "Federalism, Childcare and Multilevel Governance in Australia" in (eds) Melissa Haussman, Marian Sawer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010).

Brennan uses services for young children as an example to illustrate how gender equality advocates proved adept at switching focus from the central level to the state level. The advocates convinced a progressive central government to expand its role in education by funding one year of preschool for every child (preschool was previously a state responsibility and unevenly distributed), and to introduce funding for childcare services. At the same time, gender equality advocates encouraged state and local governments to develop their own initiatives to support childcare. Ultimately, however, an increased reliance on private corporations delivering childcare at both the state and central levels has reduced the gains made by earlier gender equality advocates.

Rianne Mahan and Cheryl Collier¹⁶ also use childcare as an example, focusing on Canada, where childcare is a provincial responsibility. Gender equality advocates had unsuccessfully campaigned for a nationwide, publicly funded childcare scheme, concluding it was too difficult to negotiate the federal structure. However, Mahan and Collier argue that Canadian gender equality advocates are adept at utilizing opportunities as they arise. Quebec gender advocates, for example, successfully negotiated a provincial publicly funded childcare scheme to operate in Quebec despite the failure to introduce a national scheme.

Gopika Solanki¹⁷ traces India's progression from a highly centralized to a highly decentralized federal model; India has increasingly devolved powers to local levels in a bid to encourage development and to address poverty. Solanki argues, like Brennan, Mahan and Collier, that Indian gender equality advocates have become skilled at negotiating the federal structure and use it strategically to attain their goals. Solanki uses three innovative examples: the Special Cell for Women and Children (specialized units for women in police stations); the Nari Adalats (women's courts); and the Mahila Samakhya Programme (women's empowerment through education), which were introduced at the local and state levels and then reproduced in other states because of their success. These examples show how policy innovations in one region of a federal model can lead to the reproduction of that policy in another region.

Focusing on Russia, Andrea Chandler¹⁸ argues that federalism has not facilitated the advancement of gender equality. Though there have been advances for women in literacy, day-care provision, educational opportunities and equality in the family, these benefits were centrally delivered through budgetary instruments and cannot be attributed to the federal structure itself. The collapse of the Soviet Union reduced the budgetary capacity of Russia, significantly reducing funding for social welfare, maternity leave and child welfare policies. Additionally, women's departments established in the 1990s were quietly disbanded when Vladimir Putin became President. Gender equality issues were devolved to the state level in the form of vaguely couched powers, where they remain largely unresolved.

16 Rianne Mahan and Cheryl Collier, "Navigating the Shoals of Canadian Federalism" in (eds) Melissa Haussman, Marian Sawyer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010).

17 Gopika Solanki, "A Fine Balance? Multilevel Governance and Women's Organising in India" in (eds) Melissa Haussman, Marian Sawyer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010).

18 Andrea Chandler, "Women, Gender and Federalism in Russia. A Deafening Silence" (eds) Melissa Haussman, Marian Sawyer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010) 141.

Abhishek Anand and Lekha Chakraborty¹⁹ focused on India and published a rare article on linkages between fiscal decentralization and gender. They argue that proactive fiscal transfers that reward regional and state governments for achieving gender equality outputs should be integrated into India's current formula. The current formula for transfers is needs-based, using broad criteria such as horizontal equality, incentives for efficiency, population numbers and levels of poverty. Focusing on the sex-ratio, which favours males across India, the authors recommend a fiscal transfer based on positive sex-ratios. For example, if a state has an equal numbers of male and female children born, it receives a financial bonus. The authors conclude, after examining the likely results of integrating a child sex ratio indicator into fiscal transfers, that it could incentivize gender equality goals and benefit the poorer states that have more equal sex-ratio numbers.

L Amede Obiora and Sarah Toomey,²⁰ using Nigeria as an example, argue that federalism as implemented in Nigeria has had mixed results for women. The federal system has provided some opportunities for women, particularly in political representation, and has kept the country together as a nation. However, despite a strong prohibition on sex discrimination in the national constitution it has not been enforced due to a weak central government lacking the political will to advance gender equality. Instead, the federal model has enabled ethno-religious fundamentalism to thrive in some regions, leading to entrenched discrimination against women and the blocking of gender reforms.

REPORT METHODOLOGY

This report is based on a desk review of two bodies of scholarship, key informant interviews and the views of 30 participants in a workshop on gender and federalism in Yangon, Myanmar in 2016 for women leaders. The first body of scholarship is by international gender scholars on gender and federalism in the global context. The second body of scholarship is by international and local scholars focusing on the issues pertaining to the possible introduction of a federal model of governance in Myanmar. The literature reviewed includes academic journal articles and books, reports by various non-governmental organizations and articles by journalists in newspapers and magazines. Additionally, and importantly, key informant interviews were conducted in person in Yangon and via Skype and email, with 11 representatives from government, local and international non-governmental organizations, ethnic leaders and representatives and international experts. The views of informants and the views of the 30 participants are integrated throughout this report.

19 Abhishek Anand and Lekha Chakraborty "Determining Gender Equity in Fiscal Federalism: Analytical Issues and Empirical Evidence from India" Working Paper 590, 2010. <http://www.levyinstitute.org/publications/determining-gender-equity-in-fiscal-federalism-analytical-issues-and-empirical-evidence-from-india>

20 L Amede Obiora and Sarah Toomey, "Federalism and Gender Politics in Nigeria" (eds) Melissa Haussman, Marian Sawyer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010) 211.

REPORT STRUCTURE

The report is divided into three parts. Part 1 introduces the report. It includes a brief background context of Myanmar's political situation and the debate that has led to the positing of federalism as the most appropriate mechanism of governance for Myanmar based on the *Constitution of the Republic of Myanmar* 2008. In addition, it includes a literature review and a brief overview of the report methodology.

Part 2 considers federalism in the Myanmar context. It begins with a discussion and overview of the current governance model operating in Myanmar. It then introduces and defines the concept of federalism and presents different federalism models other countries have adopted (particularly those with geographic, cultural and political similarities to Myanmar). It considers, in general terms, the key gender equality issues that must be negotiated in different federal models of governance.

Part 3 thematically examines the crucial gender equality issues that arise from the potential introduction of a federal model of governance in Myanmar. These thematic issues include the importance of a strong bill of rights in the national constitution and the importance of considering the impacts of different ways of dividing the law-making powers and administrative functions between the Union government and the states and regions (particularly in the areas of family law and inheritance, health, education, employment and business opportunities and the provision of public services and infrastructure).

Other thematic issues addressed by Part 3 include the importance of fiscal arrangements to the growth of the economy, to women's economic empowerment, to the achievement of uniform standards of women's rights and gender equality and to the centrality of the representation of women in public office at all levels. The final thematic issues include the importance of the security of women and girls, the value of mandated institutional protections of women's rights through the establishment of departments or units at all levels of government in Union, state and region governments, and the importance of establishing an independent judiciary.

PART 2:

FEDERALISM IN THE MYANMAR CONTEXT

CURRENT MODEL OF GOVERNANCE

The current model of governance in Myanmar, framed by the *Constitution of the Republic of Myanmar* 2008, has limited capacity for the advancement of gender equality and women's rights. It is a centralized model of governance, with the majority of power placed in the Union government's main branches: the executive (with the responsibility for the daily administration of the state), the legislature (the parliamentary body that has the power to enact, amend and repeal laws) and the judiciary (the system of courts that has the power to interpret and apply the law in the name of the state).²¹

Limited powers and functions are devolved from the Union government to the 14 states and regions, the one self-administered division²² and the five self-administered zones.²³ In the state and region governments, authority is largely held by Union government appointees. Although there is a court system operating in each region, it is not independent; judges are appointed, in large part, by Union government representatives.²⁴

21 Melissa Crouch, "Ethnic Rights and Constitutional Change: The Constitutional Recognition of Ethnic Nationalities in Myanmar/Burma" (2015). Online at: http://www.academia.edu/10040071/Ethnic_Rights_and_Constitutional_Change_The_Constitutional_Recognition_of_Ethnic_Nationalities_in_Myanmar

22 The Wa Self-Administered Division consists of six townships (Hopang, Metman, Mongma, Nahpan, Pangsang (Pankham), and Panwaiin Shan State). It is self-administered by the Wa people. *Constitution of Myanmar* 2008, s56(f).

23 There five self-administered zones, including four in the Shan state (Danu, Kokang, Naga, Palaung and Pao), and one in the Sagaing region. *Constitution of Myanmar* 2008, s56(a)-(e).

24 Marte Nilson and Stean Tonnesson, "Can Myanmar's 2008 Constitution be Made to Satisfy Ethnic Aspirations?" *Peace Research Institute Oslo Policy Brief* 2012.

The Union **executive** is made up of the President and the government ministers. In the states and regions, the executive is formed by the chief-minister (selected by the Union government),²⁵ and the ministers of the government. The cabinet is formed from among the members of the executive.

The executive powers of a state or region are limited to the administration and implementation of the narrow range of laws that it can enact, and the administration and implementation of Union law and any other matters the Union permits it to perform. The state and region executives must submit a region or state budget bill based on the budget the Union presents to them.

However, since 2011 and the formation of a new quasi-civilian Parliament, there has been an increasing devolution of budgetary and administrative functions from the Union government to the state and region governments. For example, greater decision-making powers have been given to townships, elections (as opposed to appointments) for the position of village tract administrator have been held, and increased fiscal transfers to state and region governments for health and education have been implemented.²⁶

The national **legislature** (Pyidaungsu Hluttaw) has two houses. The lower house is the Pyithu Hluttaw, which is a 440-seat House of Representatives, of which 330 seats are elected and 110 are held by military personnel nominated by the Commander-in-Chief of the Defence Services.²⁷ The upper house is the Amyotha Hluttaw, which is a 224 seat National Assembly of which 168 seats are elected and 56 seats are held by military personnel nominated by the Commander-in-Chief of the Defence Services.²⁸ The legislative competencies of the Union government are broad and include foreign affairs, defence, currency and coinage, postal service and telegraphs, shipping, railways, water, transport, the social sector, the judiciary, the economic sector and the management sector, including town and village land, prisons and development of the border areas.²⁹

The 14 state and region governments have a unicameral legislature (the Hluttaw), consisting of two elected members from each township, members appointed by the military and elected ethnic representatives (ethnic representatives are elected from each national race that has a population of at least 0.1 per cent of the population of the Union). The number of seats in each state or region Hluttaw depends on the number of townships and the number of ethnic representatives.³⁰

A quarter of available seats are held by military personnel nominated by the Commander-in-Chief of the Defence Services. The largest Hluttaws are the Shan State Hluttaw (143 seats) and the Yangon Region Hluttaw (123 seats); the smallest are the Kayah State Hluttaw (20 seats) and the Kayin State Hluttaw (22 seats).

25 This must be affirmed by the Hluttaw. However, a candidate may only be rejected if they fail to meet the constitutional qualifications.

26 Paul Minoletti, *Gender (In)Equality in the Governance of Myanmar. Past, Present and Potential Strategies for Change* Asia Foundation: April 2016.

27 *Constitution of the Republic of Myanmar* 2008, s109.

28 *Constitution of the Republic of Myanmar* 2008, s141.

29 *Constitution of the Republic of Myanmar* 2008, Schedule 1.

30 *Constitution of the Republic of Myanmar* 2008, s161.

The legislative competencies of the states and regions are narrow and provide little opportunity for states and regions to enact meaningful laws. For example, the states and regions have the power to legislate “cutting and polishing of gemstones.” However, the Union regulates all other aspects of the extraction, production and sale of gemstones and pearls. The states and regions have the power to legislate in the area of traditional medicine. However, the Union regulates national health, maternal, child, youth, women, the disabled, the aged and the homeless welfare. The states and regions have the power to legislate industries “other than those the Union has control over.” However, the Union is, in fact, responsible for most aspects of industry, including commerce, tourism, the forests and industrial zones.³¹

There are three **court (judicial) systems**. The primary court system across Myanmar consists of a hierarchy of courts; the Supreme Court of the Union is the highest court.³² The Supreme Court consists of a chief justice and seven to eleven judges. It has a broad original jurisdiction and is the final court of appeal for all courts, including judgements, decrees or orders passed by a court of a self-administered division or a court of a self-administered zone. In each state and region there is a system of courts that is subordinate to the Supreme Court.

The 14 High Courts are the highest in the state and region hierarchy, consisting of three to seven judges and a Chief Justice (nominated by the President in consultation with the Chief Justice of the Supreme Court). Each High Court has an original civil jurisdiction, hearing and determining cases in which the amount in dispute or value of the subject matter exceeds 500,000,000 kyats.

A High Court does not hear criminal offences at first instance, except where special circumstances require it to do so. It hears appeals from the District Court, which sits below each High Court. A District Court has original criminal and civil jurisdiction in which the amount in dispute or value of the subject matter does not exceed 500,000,000 kyats. It hears civil and criminal appeals from the Township Court, which sits below the District Court. A Township Court is primarily a court of original civil and criminal jurisdiction, with the capacity to pass sentences of up to seven years of imprisonment in criminal cases and to determine civil cases in which the amount in dispute or value of the subject matter does not exceed 10,000,000 kyats.³³

The second court system is the Constitutional Tribunal, which consists of one chairperson and eight members (who are required to be legal experts), each serving five-year terms. Members of the tribunal are elected proportionally by the President, the Pyithu Hluttaw and the Amyotha Hluttaw (the lower and upper houses). The Constitutional Tribunal has sole responsibility and authority for interpreting the Constitution and for ensuring that state and region legislation conforms to the Constitution.

The third court system is the courts martial court, which operates outside the civil court system and adjudicates the conduct of Defence Services personnel. The Constitution established the martial court system, though it provides no specific details on its structure and function.³⁴

31 *Constitution of the Republic of Myanmar 2008, Schedule 2.*

32 *Judiciary Law 2010.*

33 *Judiciary Law 2010.*

34 See Justice Base n, *Voices from the Intersction. Women's Access to Justice in the Plural Legal System of Myanmar* UN Women, 2016.

INTRODUCING AND DEFINING GOVERNANCE CONCEPTS

MODELS OF GOVERNANCE

In a unitary model of governance, which dominates globally, a central government holds, and is ultimately responsible for, all the powers and functions associated with governance. A unitary state may partially decentralize by assigning selected powers and functions to lower governance levels. A unitary state is characterized, however, by its ability to withdraw that authority. It can retain accountability over any assigned powers and functions (known as de-concentration), or it can assign accountability over the assigned functions and powers to lower levels of governance (known as devolution).

Assigned functions and powers can be fiscal (referring to the collection and distribution of revenue), administrative (referring to standard-setting and policy implementation), legislative (referring to law-making) or judicial (referring to the court system).³⁵ Federalism, in contrast to a unitary model, transfers powers and functions to state and region governments on a permanent basis, which cannot be withdrawn or overturned by the central government. Approximately 28 countries have a federal governance model.³⁶

MODELS OF FEDERALISM

Federal models vary greatly. Some give a large amount of power to the central government to regulate the country; others grant more autonomy to states and regions. Some impose clear divisions between the powers of the central government and powers of the states and regions, while others have overlapping or shared powers.

Four generic federalism models can be identified: unitary, dual, competitive and cooperative federalism.

In **Unitary federalism**, the central government retains greater rights and resources and dominates the formation of policy and law (e.g. in Australia, the federal government has power over taxation, defence, foreign affairs and postal and telecommunications services and the states have power over all other matters that occur within their borders, including police, hospitals, education and public transport). In unitary federalism, the openness of the central government is crucial to the advancement of gender equality.

35 Hamish Nixon, Cindy Joeline, Kyi Pyar Chit Saw, Thet Aung Lynn and Mathew Arnold, *State and Region Governments in Myanmar*, Asia Foundation 2013, 2.

36 Argentina (23 provinces and one autonomous city, Buenos Aires); Australia (six states and two territories); Austria (nine states); Belgium (three regions and three linguistic communities); Bosnia and Herzegovina (two entities and one district); Brazil (26 states and the Federal District); Canada (ten provinces and three territories); Comoros (Anjouan, Grande Comore, Mohéli); Ethiopia (nine regions and two chartered cities); Germany (16 states); India (29 states and seven union territories); Iraq (18 governorates and one region, Kurdistan); Malaysia (13 states and three federal territories); Mexico (31 states and one federal district, Mexico City); Federated States of Micronesia (Chuuk, Kosrae, Pohnpei and Yap); Nepal (seven provinces); Nigeria (36 states and one federal territory, the Federal Capital Territory); Pakistan (four provinces, two autonomous areas and two territories); Russia (46 oblasts, 22 republics, nine krais, four autonomous okrugs, three federal cities, one autonomous oblast); Saint Kitts and Nevis (two states); South Sudan (ten states); Sudan (17 states); Switzerland (26 cantons); United Arab Emirates (seven emirates); United States (50 states, one incorporated territory and one federal district, the District of Columbia); Venezuela (23 states, one capital district and one federal dependency).

In **Dual federalism** (e.g. the United States), a complete set of institutions is established at the central, state and region level, each with separate, clearly defined functions. In this model, uniformity of gender equality reforms and alliances between women's groups and interests may be harder to achieve because gender equality advocates must lobby each state and region government separately for reform measures. For example, rather than advocating for a uniform, national gender violence law, gender advocates may have to lobby for legislation in each state and region.

In **Competitive federalism** (e.g. Canada and India), there is a complete set of institutions at the central, state and region level, each with separate clearly defined functions (as in a dual federal model). However, the states and regions compete for resources and revenue. For example, one state might introduce publicly funded childcare and compete with other states to obtain central funding, private investment and citizen support. This model, like dual federalism, can also fragment the women's movement and may create tension between individual equality rights and group identity rights. This is because the competitive nature of the model may encourage women's groups to focus on reforms in their own region or state rather than forming alliances with women's groups in other states and regions.

In **Cooperative federalism** (e.g. Germany), the central government and the state and region governments engage in joint decision-making and sharing resources and administrative capabilities. For example, the central government and the states and regions might work together to build a new highway. The central government might provide the bulk of the funding; the states and regions might provide ongoing maintenance.

Many federal systems are a mixture of these models. All federal systems share many characteristics, including a central government; a written constitution that identifies and sets out the parameters of the federal system; regional, state or provincial governments with genuine power; a procedure for resolving constitutional disputes; a model for judicial review that prevents governments overstepping their jurisdictions; and a mechanism for resolving disputes between the state, region and central governments.

The type of society often determines the type of federalism chosen. A homogenous country without territorially organized communities and with a strong single national identity might select a unitary federal model. A country with numerous identity groups making territorial claims and where there is pressure to strengthen regional arrangements might select a dual or competitive federal model. In Myanmar, many ethnic minorities favour a system of federalism that affords considerable fiscal, legislative and executive power to the state and region governments.³⁷ However, although the Union is currently divided into states and regions organized according to ethnic demographics (seven states are named after large ethnic minority groups: Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan States), within each state or region there are a range of ethnic and religious communities. In Mon state, for example, although the majority of residents are Mon, there is also a large number of ethnic Bamar residents, members of the Kayin and Pa-O ethnic groups, and a small, dwindling Anglo-Myanmar community. In another example, in Chin state, the Chin people are made up of many tribes that, although historically related, now speak divergent languages and have distinct cultural and historical identities. If a dual or competitive model is chosen, then it is important that the rights of minorities within the states and regions are protected.

37 Ethnic Armed Organizations, *Action Plan for Establishment of a Democratic Federal Union* submitted to Union Peace Conference (21st Century Panglong) 2016.

Table 1. Key Features of a Successful Federal Model³⁸

The boundaries of states and regions are acceptable to the people living in the states and regions	A political culture of participation, inclusion and trust
A financial equalization or a fiscal transfer system that shares revenue between states and regions so that they have equal capacity to provide services to residents	Democratic institutions, such as the universal franchise and the rule of law
An efficient dispute resolution mechanism for disputes within states and regions and between states, regions and the central government	The prohibition of violence and concrete measures to enforce the prohibition
Respect for human rights	Economic stability
No intervention from neighbouring states	A general will to work together
An efficient, non-corrupt administration	An appropriate balance between centralization and decentralization and between self-rule and shared rule

NEGOTIATING A FEDERAL MODEL THAT ADVANCES GENDER EQUALITY

There is no common theory about the impacts different federal models have on the advancement of gender equality. Gender scholars have differing views as to whether a federal model has a greater capacity to advance gender equality than a unitary model of governance.³⁹ Historically, gender scholars have argued against federalism as an effective model for advancing gender equality on the basis that it limits central government power and fragments its ability to implement redistributive social policies that benefit women and girls.⁴⁰ For example, if each region or state is individually responsible for the delivery of education, then facilities and opportunities for girls and women may differ according to the wealth and priorities of each region or state. More recently, however, gender scholars have argued that in certain circumstances, a federal model can enhance the advancement of gender equality. Some issues, however, are difficult to resolve regardless of the model of governance. For example, traditional practices that discriminate against women and children are contested in both unitary and federal states.

Ultimately, the effectiveness of any model of governance, whether unitary or federal, at advancing gender equality depends on a range of other factors, including the political will of central and

38 Alexander Niedermeier and Wolfram Ridder, *Decentralisation, Federalism and Democracy*, Hanns Seidel, 2016, 2.

39 Gwendolyn Gray, "Federalism, Feminism and Multilevel Governance: The Elusive Search for Theory" in (eds) Melissa Haussman, Marian Sawyer and Jill Vickers (Ashgate: 2010) 19, 20.

40 Gwendolyn Gray, "Women, Federalism and Women Friendly Policies" (2006) 65(1) *Australian Journal of Public Administration* 25, 25.

regional governments (for example, whether they are progressive or conservative); the ethnic and cultural diversity of a population (for example, whether regional or dispersed); the size of a population; the presence or absence of conflict; the level of economic wealth; and the strength of traditional practices and cultural norms that are not in accord gender equality.⁴¹ While there is no way of knowing whether a failed policy in a unitary state might have worked more effectively in a federal state, there are compelling arguments in the literature supporting the capacity of federal models to advance gender equality if the surrounding political, economic, cultural and social conditions are conducive and if appropriate mechanisms are installed (see Table 2).

Table 2. Opportunities and Limitations of Federalism for Advancing Gender Equality

Opportunities of Federalism	Limitations of Federalism
Federalism can create competition between states and regions that can encourage policy transfer and learning across jurisdictions. For example, a successful gender equality programme, policy or law in one region can provide an example for other states or regions, which they might then adopt.	Federalism requires sets of laws and policies in each state and region, which may not lead to the uniform delivery of women's rights across the country.
Federalism creates multiple access points for women to lobby for reform measures. It can increase democratic space and leverage for citizens. In particular, if there is a blockage at the regional level, women's organizations can lobby other states or regions or the central government.	Federalism means women often spend much of their time, resources and energy on trying to achieve uniform standards across different states and regions. In a unitary state, those energies could be focused on lobbying the central government for a single law or policy that advances gender equality and that would apply uniformly to the whole country.
Federalism may result in 'bigger' government because as state and region governments compete for electoral support and prestige, there is an increase in programmes and opportunities (including those responding to gender equality issues).	Federalism is a complicated structure of governance with multiple institutions and divisions of powers, which may be difficult for citizens to understand and navigate.
Federalism is better able to respond to ethnic diversity and conflict by providing opportunities for autonomy, self-rule and self-determination. The ensuing peace will benefit women and girls, who are disproportionately affected by conflict.	Federalism may create a barrier to political solidarity among women with similar policy goals by focusing women on achieving reforms within their region or state government. This fragmentation may make it difficult for women to organize collectively. ⁴²

41 Gwendolyn Gray, "Federalism, Feminism and Multilevel Governance: The Elusive Search for Theory" in (eds) Melissa Haussman, Marian Sawer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010) 39.

42 Gwendolyn Gray, "Federalism, Feminism and Multilevel Governance: The Elusive Search for Theory" in (eds) Melissa Haussman, Marian Sawer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010) 32.

Opportunities of Federalism	Limitations of Federalism
Federalism may limit the power of a central government by dividing power, which can protect women from discrimination by a conservative central government.	If each state or region government has autonomy over law-making and policy, federalism may make it more difficult to implement international norms as universal rights that apply across the country.
Federalism may facilitate the introduction of radical gender equality policies because proponents only need agreement in one region or state rather than across the whole country. ⁴³	Federalism, because there are multiple governments, may make it more difficult to achieve the uniform introduction of controversial gender equality reforms (e.g. gender quotas).
Federalism creates more opportunities for women's representation in public office, which may increase women's participation in the setting of priorities, policies and measures.	Federalism often devolves issues of relevance to women, such as education and health, to state and region governments. This practice may make it more difficult to achieve international standards of gender equality. ⁴⁴ This limitation can, however, be addressed with a strong bill of rights that is binding on states and regions. For example, a strong equality and non-discrimination provision that provides an equality standard for the Union, which the states and the regions must adhere to.
Federalism enables the delivery of public goods and services to be administered locally, which is geographically closer to the people, advantaging women and girls.	Federalism may be expensive due to the greater number of institutions and procedures; therefore, there may be less money for gender equality reforms and measures.
Federalism creates local governments that may be better informed about local needs, particularly issues relating to women.	If each region or state is given the power to set standards relating to cultural practices, particularly in family relationships, then federalism may make it more difficult to prohibit traditional practices and cultural norms that discriminate against women.

43 Gwendolyn Gray, "Federalism, Feminism and Multilevel Governance: The Elusive Search for Theory" in (eds) Melissa Haussman, Marian Sawyer and Jill Vickers *Federalism, Feminism and Multi-Level Governance* (Ashgate: 2010) 27.

44 Susan Franceshet and Jennifer Piscopo, "Federalism, Decentralisation and Reproductive Rights in Argentina and Chile" (2012) *Journal of Federalism* 1, 2.

PART 3:

GENDER AND FEDERALISM IN MYANMAR

BILL OF RIGHTS

In a federal model in which there is a division of powers and functions between the central government and the state and region governments, it is critical that the national constitution enshrines guarantees of universal human rights and norms. This ensures that each state and region government is obligated to comply with international human rights norms. Similarly, if there are state and region constitutions, enshrining such guarantees in those ensures that they too incorporate universal human rights norms.

In the federal model selected as Myanmar's governance model, the Bill of Rights in the Constitution could be strengthened to ensure that uniform gender equality standards are adopted across the country, fulfilling Myanmar's international obligations. In particular, the equality and non-discrimination provisions in Articles 347 and 348 could be expanded to include substantive equality, direct and indirect discrimination, and an effective system of enforcement.

Additionally, to enable the achievement of equality and non-discrimination in practice, a temporary provision could be developed in other legislation to authorize the use of special measures, when necessary, to advance women's integration into education, the economy and employment, to provide equal opportunities for women to represent their governments internationally and to encourage the equal participation of women in all aspects of public life.

The inclusion of a temporary special measures provision recognizes that their use is part of a necessary strategy for accelerating the achievement of substantive equality for women in all areas of their lives. Other important guarantees that should be included in a strengthened

Bill of Rights include equal rights to health, education, social services, social security, equal representation in public office and equal rights in all aspects of employment.⁴⁵

KEY RECOMMENDATIONS

- ✓ Expand the equality and non-discrimination provisions in the Constitution to include substantive equality and direct and indirect discrimination.
- ✓ Develop temporary special measures in legislation to authorize special measures in all areas of women's lives.
- ✓ Include guarantees of an equal right to health, education, social services, social security, equal representation in public office and equal rights in all aspects of employment.

DIVISION OF LAW-MAKING POWERS AND ADMINISTRATIVE FUNCTIONS

OVERARCHING GENDER EQUALITY ISSUES

The division of law-making powers and administrative functions between the Union government and the state and region governments must be negotiated. The division of law-making and administrative functions has a significant impact on gender equality and must be carefully considered. In many federal models, whether unitary, dual, competitive or cooperative, the central government holds exclusive powers related to national sovereignty, foreign defence, large infrastructure projects (such as airports, highways and ports), and areas that require uniform regulation.

In a unitary federal model, the central government is primarily responsible for legislating (as in Argentina, Austria and Germany) and therefore determines the legal framework within which state and region governments shape policy. In countries with a progressive central government, many gender scholars support a unitary model with broad law-making and administrative powers because it can implement universal rights, uniform welfare programmes, and uniform family law. However, if a central government is conservative, or a conservative government is elected to replace a progressive government, then a unitary model can stifle the advancement of gender equality and reduce or remove gains made.

In a cooperative federal model, legislative and administrative functions are held concurrently. Ideally, in this model central, state and region governments interact cooperatively and collaboratively to solve common problems. However, in a cooperative model a central government often strongly influences the policies of state and region governments through the amount of funding it provides for programmes. As in a unitary federal model, if there is a

45 Christine Forster, *Women's Rights in Constitutions: Global Good Practices in Advancing Gender Equality and Women's Empowerment in Constitutions* (UNDP: New York 2016) 1 42. Online at: <http://iknowpolitics.org/en/learn/knowledge-resources/report-white-paper/womens-rights-constitutions-global-good-practices>

progressive central government, gender equality objectives may be easily realized, but if the central government is conservative it may be more difficult to advance gender equality.

Gender scholars often favour unitary and cooperative models over dual and competitive federal models. Minority ethnic women, however, may approach and experience federalism differently than women belonging to a majority ethnic group. Minority women who are part of a territorial minority may prefer a dual or competitive model of federalism with strong state and region governments.⁴⁶

There are tensions between ethnic minority women's commitment to the women's movement and to the ethnic communities to which they belong — and the discrimination and oppression they have experienced in this context.⁴⁷ Many women in ethnic minority communities support self-rule, viewing this as a means to preserve distinct identities, cultures and languages and to enable their communities to have greater control over their lives. Dual and competitive federal models, however, can lead to overt unequal outcomes for women across a country. For example, in the United States the state of Wyoming gave women the franchise in 1869, 51 years before it was granted nationally.⁴⁸ In Switzerland, after the national vote was extended to women in 1971, one canton continued to disenfranchise women for another 20 years.⁴⁹ In both dual and competitive models, safeguards must be introduced to ensure that minimum CEDAW-compliant standards of gender equality are reached and maintained.

The division of law-making powers and administrative functions is very important to gender equality objectives in federal models; it is critical that women's groups work together to consider which level of government should have jurisdiction over which issues. In Myanmar, there are many laws — far from limited to criminal, family and employment law — that discriminate against women.⁵⁰ There are many services that are inadequate, including public goods and services, social welfare and benefits, health, education and support for victims of violence.

Myanmar women must determine whether laws and programmes delivered by state and region governments are preferable or whether, in a particular area, it is more desirable for the Union government to set and enforce uniform standards.⁵¹ It is clear that state and regional autonomy must be enhanced in a new federal arrangement and that ways to advance gender equality within that framework must be secured.

The following sections explore key areas of family law and inheritance, health, education, employment and business opportunities and the provision of public goods and services. The sections consider the different ways in which law-making powers and administrative functions can be divided and the gender implications of each.

46 This was the view of many of the informants.

47 Jenny Hedstom, "We did not Realize about the Gender Issues: So We Thought it was a Good Idea" (2015) 18(1) *International Federal Journal of Politics* 61, 62.

48 Pamela Paxton and Melanie M. Hughes, *Women, Politics, and Power: A Global Perspective* (CQ Press, 2016).

49 Online at: <http://history-switzerland.geschichte-schweiz.ch/chronology-womens-right-vote-switzerland.html>

50 Gender Equality Network, *Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws* 2013. Online at: www.burmalibrary.org/docs20/Myanmar_Law_CEDAW-en-red.pdf

51 Marian Sawyer and Jill Vickers, "Womens Constitutional Activism in Australia and Canada" (2002) 13(1) *Canadian Journal of Women and the Law* 1, 33.

FAMILY LAW AND INHERITANCE

Family law that provides for equal rights in the family is important for the advancement of gender equality and women's empowerment. The law has historically granted men enormous power in the family; discrimination against women and girls in family law systems positions them in a subordinate position to men within the family, which is then replicated in the economy, citizenship and in all areas of decision-making in the public sphere.

Equality in family law includes a requirement for full and free consent to marriage, an equal marriageable age of 18, a legal framework for no-fault separation and divorce, child custody decisions that are based on the best interests of the child, an equality- and needs-based framework for spousal and child support, a framework for the equal division of marital property after divorce and separation, and a legal framework for inheritance that provides for males and females to inherit equally. It is crucial, therefore, to carefully consider the gender equality implications of the different approaches to the division of law-making powers and functions in family law and inheritance within a federal model and to prudently negotiate that division. There are a range of options, each with its own gender equality implications.

OPTION 1

The Union government is given the power to enact a **uniform law** that the states and regions implement. This approach, like the approach of a unitary state, can be positive for gender equality if the uniform law meets the standard of good practice in family law and accords with international standards (Article 16 of CEDAW in particular). In addition to ensuring that family laws do not discriminate against women and girls, this approach will ensure uniformity in the formal law throughout Myanmar. This approach could be modified so that the Union government sets minimum standards that states and regions must be accord with, but outside of those minimum standards states and regions have capacity to legislate and implement family law in accord with their own customs and traditions. For example, the Union government could mandate an equal marriageable age of 18 and that full and free consent must be given by both parties. States and regions would be free to recognize customary marriages that meet those two minimum requirements, to decide who has authority to officiate over marriages and to determine the forms of ceremonies that can constitute a marriage. Mechanisms to review customary practices and to ensure the formal law was implemented would be necessary to ensure adherence.

OPTION 2

Law-making power and administrative functions are **divided** so that the Union government legislates in some areas of family law and state and region governments legislate in others. Careful consideration of the implications of different divisions must be made, as divided powers can have negative (intended and unintended), complicating effects. For example, in Australia the central government has exclusive legislative jurisdiction over the areas of marriage, divorce, child custody, property division and spousal maintenance, while the states and territories have exclusive legislative jurisdiction over child protection and family violence. The result is a messy array of family laws that make family relationship matters "complicated, difficult and time-consuming" for women to navigate.⁵²

52 The Australia federal *Family Law Act* 1975 covers divorce, children's orders, property division, spousal maintenance and related matters. Since 1 March 2009 (1 July 2010 in South Australia) *de facto* couples are also covered by the *Family Law Act* in states or territories that have conferred their power over *de facto* relationships to the federal jurisdiction. The power has been conferred in all jurisdictions except Western Australia.

OPTION 3

Law-making and administrative functions are **shared**, so that the Union government and states and regions must negotiate the rules of family law. In practice, this approach often results in the central government holding significant power over decisions, particularly if fiscal authority resides with the central government. For example, in Australia, although aspects of family law are shared, the central government regulates most aspects of family law.⁵³

OPTION 4

States and regions have complete **autonomy** over law-making and the administration of family law and inheritance. If states and regions remain committed to traditional practices and religious systems that discriminate against women, it may be difficult for women to negotiate reform and to achieve equal rights in this key area. In Nigeria, for example, considerable power over family law was devolved to states, some of which implemented harsh regimes that reinforced traditional practices that discriminated against women and girls.⁵⁴ This approach may also result in a lack of uniformity across Myanmar, with the result that women and girls will have equal rights in family matters in some states and regions but not in others.⁵⁵

OPTION 5

Family law is devolved to **religious authorities**, as in India, where there are different personal laws for each religion based on its customary and traditional practices. For example, Hindu marriages are governed by the *Hindu Marriage Act 1955*, while Christian marriages are governed by the *Christian Marriage Act 1872*. Many of the religious-based personal laws in India discriminate against women and girls and are not in accord with CEDAW, and there is no uniformity for women and girls governed by different rules depending on their religion. Although the Constitution of India mandates a uniform personal code, this has not been implemented because it is strongly contested, largely on the grounds of religious identity and the retention of customary practices.⁵⁶ India has enacted the secular *Special Marriages Act 1984* as a compromise. Devolving family law to religious authorities is not perhaps the most suitable approach for Myanmar.

KEY RECOMMENDATIONS

- ✓ The Union sets minimum standards for family law in accord with Article 16 of CEDAW, and state and region governments have autonomy over family law and implementation outside of those minimum standards.
- ✓ Mechanisms should be established to ensure customary laws adhere to formal law standards.

53 Marian Sawer, *The Ethical State* 2003, 117.

54 L. Amede Obiora and Sarah Toomey, "Federalism and Gender Politics in Nigeria" in (eds) Melissa Haussman, Marian Sawer and Jill Vickers (Ashgate: 2010) 211, 216.

55 Franceschet and Piscopao n 13, 18.

56 Nivedita Menon, "A Uniform Civil Code in India: The State of the Debate in 2014." *Feminist Studies* 40.2 (2014) 480-486.

EDUCATION

The legal regulation of education and its effective delivery are critical to the well-being and equality of women and girls. Educating women and utilizing their earning capacity to the same extent as men optimizes labour in an economy and raises productivity. It reduces poverty, increases life expectancy, improves infant mortality and morbidity, increases formal savings, increases agricultural productivity, grows small businesses⁵⁷ and leads to greater investments in the human capital of children, thereby improving the productivity of the next generation of workers.⁵⁸

Education in Myanmar and the policies governing it have been contentious in recent decades due to a focus on Myanmar language and culture. This has led to the development of non-government-run schools in a number of areas.⁵⁹ Since 2011, government spending on education has increased significantly, coupled with an upsurge of international aid. New policies have been introduced, aiming towards providing free and compulsory education for all, improving staff wages and constructing schools.⁶⁰ Some (limited) decentralization has also occurred, enabling the introduction of mother-tongue learning in regional areas and the expansion of the basic education system to include a kindergarten system and free education through to Grade 12.⁶¹

After a series of protests, the Union government allowed states and regions to develop their own curricula, utilizing ethnic languages and introducing learning approaches that valued and protected their culture, art, traditions and national heritage.⁶² For girls, completing school results in a higher level of labour force participation, higher incomes, reduced violence and improvements in health.

It is important, therefore, to carefully consider the gender equality implications of the different approaches to the division of law-making powers and administrative functions in relation to education and to prudently negotiate that division. There are a range of options.

OPTION 1

Law-making powers and administrative functions in education and its delivery are **divided** between the Union government and the state and region governments. Careful consideration of the implications of different divisions must be made, particularly considering the coordination of law and service delivery. In the Myanmar context, it may be advantageous for the Union government to set basic standards in relation to the delivery of education, ensuring that a general

57 Naila Kabeer & Luisa Natali, *Gender Equality and Economic Growth: Is there a Win-Win?* IDS Working Paper 417 Institute of Development Studies 2013; John Ward, Bernice Lee, Simon Baptist & Helen Jackson, *Evidence for Action Gender Equality and Economic Growth* September 2010.

58 Australian Government, *Delivery Strategy: Pacific Women Shaping Pacific Development 2012-2022*, 8. <http://www.pacificwomen.org/resources/reports/delivery-strategy-pwspd-2012-2022/>

59 Kim Jolliffe and Emily Mears, *Strength in Diversity: Towards Universal Education in Myanmar's Ethnic Areas*, Asia Foundation 2016, 13.

60 Jolliffe and Mears n 59, 29.

61 *National Education Law* 2015.

62 Jolliffe and Mears n 59, 32.

curriculum is delivered alongside a local curriculum so that ethnic students have guaranteed access to the same curriculum offered to the Burman majority.

Research shows that children who begin their education in their mother-tongues do better throughout the educational process rather than starting with a new language. However, for girls, in addition to their ethnic languages, speaking Burmese (the majority language) fluently and understanding the Burman culture will enhance their employment prospects throughout Myanmar, increase their ability to stand for election in the Union parliament, and increase their ability to understand and enforce their rights (including, if necessary their capacity to communicate with the military).

OPTION 2

Law-making and administrative functions are **shared**, so that the central government and states and regions must negotiate the regulation of education and its delivery. This may be an advantageous approach in the Myanmar context for the advancement of gender equality because Union involvement and cooperation may be necessary to raise the education standards uniformly throughout the country. This model is favoured for higher education by the Ethnic Armed Groups, as stated in their 'Action Plan for the Establishment of Democratic Federal Union'.

OPTION 3

States and regions are given complete **autonomy** over education regulation, administration and delivery. Each state and region has different needs; this approach could ensure that states and regions can have control over the content of education, and can deliver, for example, education in local languages and ensure the provision of positive representations of minority history, culture and identity. It may, however, lead to inconsistent access to education for girls and women across the country. It may also lead to girls in ethnic minorities being disadvantaged by not having access to the same education received by the Burman majority. This model is favoured for basic education by the Ethnic Armed Groups, as stated in their 'Action Plan for the Establishment of Democratic Federal Union', but to ensure there is no disadvantage, they also support sharing of other aspects of education regulation and delivery.

KEY RECOMMENDATION

- ✓ The Union government and state and region governments share the responsibility for the regulation and delivery of education.

HEALTH

The legal regulation of health services and their effective delivery is critical to the well-being and equality of women and girls. Good health and well-being are crucial to reducing poverty, enabling women to engage in productive activities and accessing education. It is crucial, therefore, to carefully consider the gender equality implications of the different approaches to the division of law making powers and administrative functions within a federal model and to prudently negotiate that division. There are a range of options, each with its own gender equality implications.

OPTION 1

Law-making powers and administrative functions in the area of health are **divided** between the Union government and state and region governments. Careful consideration of the implications of different divisions must be made, particularly considering the importance of the coordination of law and service delivery. For example, if the Union government permits an abortion if a woman's health is in danger, but family planning programmes and health services are regulated and administered by the state or region government, they may conflict with each other. In Canada, for example, the national law does not restrict abortion. However, because provinces control health-care funding and facilities, many women who are not legally prevented from obtaining abortions are practically prevented because the province does not provide adequate facilities.

OPTION 2

Law-making powers and administrative functions are **shared**, so that the Union government and states and regions must negotiate and collaborate on the regulation and delivery of health services. A state or region may not have the capacity to develop a comprehensive health-care system, so it might be necessary for the Union to work with the region or state in order to develop an appropriate framework. The Union government can make general rules to guarantee minimum standards in hospitals and health-care facilities, and the states and regions can make specific rules to address their particular needs. This approach provides space and opportunity for innovation and learning among the Union, states and regions. In India, for example, the state of Madhya Pradesh reduced infant mortality by using an innovative SMS system to track approximately 1,200 newborns. Other states subsequently adopted this successful innovation. This model is favoured for advanced health-care, research and the prevention of infectious diseases by the Ethnic Armed Groups, as stated in their 'Action Plan for the Establishment of Democratic Federal Union'.

OPTION 3

States and regions have complete **autonomy** over law-making and administration functions in health services. While each state and region has different health needs, particularly in relation to women, this approach could ensure that states and regions can have control over the delivery of health services, although they may not have the capacity to develop a comprehensive health-care system. Additionally, in areas such as family planning and access to reproductive services (e.g. contraception and abortion services), this approach may enable discriminatory practices in some states and regions. For example, in Argentina, a central government policy to make available free contraception available was stymied by the division of law-making powers, which enabled conservative leaders to resist the policy. This model is favoured for basic health care by the Ethnic Armed Groups, as stated in their 'Action Plan for the Establishment of Democratic Federal Union'.

KEY RECOMMENDATIONS

- ✓ Union government and state and region governments share the responsibility for health care delivery.
- ✓ Union sets legal standards for the availability of services, such as family planning, maternity care and abortion.

EMPLOYMENT AND BUSINESS OPPORTUNITIES

Women's participation in the economy, as employees in both the formal and informal employment sector, and as formal and informal business operators, is critical to the Myanmar's economic prosperity and to advancing gender equality. Despite enacting new laws regulating some areas of employment relations, Myanmar does not have a strong legislative framework for employment relations⁶³— many employment laws are outdated.⁶⁴ While the lack of employment protections affects all workers, it has a disproportionate impact on women, who are more likely to be subject to discrimination in pay and in working conditions or to be victims of sexual harassment. In addition, women are the main beneficiaries of maternity and parental leave provisions. For example, women and men are paid different wages in agriculture, despite a Constitutional guarantee of equal pay for work of equal value.

A considerable proportion of women's economic activity occurs in the informal sector (where women work as casual employees in informal small-scale fisheries, in food production, in the garment industry, in agriculture, in hospitality and in tourism) without any legislative protection of their rights. Women also work in subsistence agriculture, hunt in lagoons and rivers for small fish and shrimps and collect forest products, including mushrooms, wild fruits, nuts and wild vegetables. Much of the women's production in these areas is consumed at home, with the women selling any surplus in the local market. Women also simultaneously manage most of a household's domestic work.⁶⁵

Women are also active in small businesses, particularly in the markets that operate in all parts of Myanmar. Women make and sell handicrafts such as *thanaka*, wood carvings, tapestries, puppets, jewelry and produce. For market sellers, if there is no nearby local market they must travel, which can be costly and difficult if buses are infrequent. Additionally, if the market runs over a weekend and accommodations are limited or inadequate, women who have children or elderly parents to care for may have difficulty attending. Some markets only have stalls available for full-time vendors and do not provide for women irregularly coming to sell their produce; this may leave women selling their produce from the pavement.

The challenges for women operating small businesses in the informal economy include unstable markets and lack of access to markets (particularly regional and international markets), inadequate and unsafe transportation, difficulty in transacting with the formal sector, low financial inclusion rates, lack of information, skills and training on all aspects of business operations, and the lack of access to formal or affordable finance. Grants from government and donor agencies typically require business registration for eligibility, and banks require formalization for lending. In particular, women in the informal sector are often unaware of the benefits of formalizing their business, which include easier access to finance, markets, training and networks.⁶⁶

63 *Social Security Law 2012; Labor Dispute Law 2012; Employment and Skill Development Law 2012.*

64 *Leave and Holiday Act 1951, Factories Act 1951, Workman's Compensation Act 1923, Employment and Training Act 1950.*

65 Ministry of Social Welfare, Relief and Resettlement and Department of Social Welfare of the Government of the Republic of the Union of Myanmar, Asian Development Bank, the United Nations, *Myanmar Gender Equality and Women's Rights in Myanmar. A Situation Analysis* 2016, 63, 65, 67.

66 K Dayaram, M Rola-Rubzen and J Burgess, *Gender Development in Myanmar: An Exploration of Women's Leadership Trajectory* in M Rola-Rubzen and J Burgess (eds) *Human Development and Capacity Building. Asia Pacific Trends, Challenges and Prospects for the Future* (Rotledge, 2016).

The major impediments to women's participation in business include challenges in formalizing, operating and growing their businesses. The complexity and cost of obtaining business licenses, the business compliance requirements (including annual reporting and tax obligations) can be onerous and costly for women. Women in Myanmar have less access to land and other forms of capital; therefore, it is difficult for them to raise mortgages to start or expand a small business. Loans are difficult for women to access because women are rarely able to pledge land or leases as loan security. Secured transactions legislation can assist women to obtain loans by enabling lenders to use personal property of any nature (both tangible and intangible) as security.

Collateral under such legislation can include present and future-acquired property, machinery, accounts, accounts that have been sold, goods that are consigned, proceeds of collateral, timber or minerals, goods leased or a building or improvement to real property to which a security interest has been attached or that has been rented. The parties may agree that the debtor will remain in possession of the collateral and may (or may not) sell, deal in or otherwise dispose of the collateral without the creditor's knowledge or consent. The secured transactions law must set out a workable system for enforcing lenders' rights, including seizure and sale after default, as its success depends upon creditors' abilities to speedily enforce their rights.

The state has a significant role in women's employment and business opportunities. Therefore, it is crucial to carefully consider the gender equality implications of the different approaches to the division of law-making powers and administrative functions in employment and business opportunities within a federal model and to prudently negotiate that division. There are a range of options, each with its own gender equality implications.

OPTION 1

The Union government **divides** law-making powers and administrative functions in relation to employment relations. The Union creates minimum standards to which all states and regions must adhere to, including guaranteed minimum wage, equal working conditions, a guarantee of equal pay, the right to organize, occupational health and safety standards, maternity and parental leave and sexual harassment protection. States and regions can enact supplementary employment legislation that adheres to the minimum standards. The Union government is also given the power to enact a uniform secured transactions law. This approach can be a positive approach for gender equality if the uniform law meets the standards of good practice in employment and accords with international standards (Article 11 of CEDAW in particular). In addition to ensuring that women and girls are not discriminated against in employment laws, this approach will ensure uniformity in the formal law throughout Myanmar.

OPTION 2

States and regions have complete **autonomy** over law-making and administrative functions in employment law and business opportunities. This approach may not enhance the overall productive potential of Myanmar, and it may be difficult for women to negotiate reform or to achieve equal rights for women in this key area. While it might be beneficial if state and region governments have the power to regulate the registration of businesses and to issue business licences in accord with local conditions, gender equality is more likely to be advanced if the Union government legislates minimum standards of employment.

KEY RECOMMENDATIONS

- ✓ The Union government and state and region governments divide the law-making and administrative functions in employment relations.
- ✓ The Union government sets the minimum standards for employment relations in accord with Article 11 of CEDAW.
- ✓ State and region governments are responsible for simplifying business registration, business licences, financial inclusion policies and delivering programmes to facilitate women's entry into the formal sector.

PUBLIC GOODS AND SERVICES

The provision of public goods and services, such as transportation, clean water, energy, sanitation and communications are critical to sustainable economic growth, poverty reduction and advancing gender equality. Public goods and services enable the movement of people and goods, provide access to local and global markets, create employment opportunities and improve health, education and development. Effective infrastructure investments can broaden markets and lead to greater opportunities for trade, business, investment and employment. Without adequate infrastructure providing such public goods and services, Myanmar will be unable to fulfil its economic potential and the benefits of growth will not be spread to poorer or more remote areas. In particular, the provision of public goods and services is critical to women's social and economic development, is a human right and, by increasing women's economic activity, can significantly contribute to the economic growth of Myanmar.

The failure to provide adequate public goods and services disproportionately affects women and girls. For example, the provision of sustainable energy sources reduces women's domestic work and, as a result, provides women with more time and opportunities to generate income. Only one-quarter of the Myanmar population has access to a regular supply of electricity; in rural areas, the national power grid network covers only 7 per cent of villages.⁶⁷

Many households therefore depend on solid fuels for cooking and heating and on diesel lamps, batteries and candles for lighting. This places a significant burden on women and girls who are forced to spend substantial amounts of time searching for firewood, maintaining fires and cooking over an open fire. They cannot rely on basic electrical appliances (e.g. grinding mills, stoves and water pumps) to reduce their domestic workload. Overall, the poor supply of energy to Myanmar homes reduces women's ability to generate income, increases their domestic burdens and increases the number of girls prevented from attending school in order to assist with domestic chores.⁶⁸

The provision of public goods and services affects women and girls' access to drinkable water. Women and girls are responsible for water collection in 72 per cent of Myanmar households; 28 per cent of rural households rely on a pond, stream, river or rainwater as the main source of drinking water. On average, the time taken daily to collect water is 16.8 minutes, but it is

67 Asian Development Bank, UNDP, UNPF UN Entity for *Gender Equality and the Empowerment of Women, Gender Equality and Women's Rights in Myanmar. A Situation Analysis* 2016, 58.

68 Asian Development Bank n 67, 59.

significantly longer in some rural areas. This increases women and girls' domestic burdens, reduces their available time for productive activities and creates a safety hazard when they walk to collect water.

The provision of sanitation facilities also has a disproportionate affect on women and girls. Although 74 per cent of households in Myanmar have flush toilets or an improved pit latrine, the remainder have traditional pit latrines or no latrine at all. Toilet facilities improve women and girls' health and provides additional safety, as they do not have to venture into the fields and beyond to toilet.

Finally, access to safe reliable transport facilities is critical for women and girls to improve their mobility so that they can access employment and business opportunities such as the market. Public transport is infrequent and unreliable in rural parts of Myanmar, and women are often forced to wait at stops for lengthy periods of time, thereby increasing risks to their security. Additionally, many rural areas lack footpaths, footbridges and adequate lighting. Women will often refuse employment opportunities because of poor transport facilities.

Developing an effective governance model is critical to the delivery of public services throughout Myanmar in order to enable proper planning, budgeting, procurement, oversight and asset management. Integrating gender equality issues into infrastructure development is crucial to reducing women's domestic burdens, reducing poverty, improving health, increasing safety for women and girls and to generating more time for productive endeavours. It is therefore important to carefully consider the gender equality implications of the different approaches to the provision of public goods and services within a federal model and to prudently negotiate that division. There are a range of options, each with its own gender equality implications.

OPTION 1

The responsibility for the delivery of public goods and services is **divided** so that the Union government provides public goods and services in some areas and state and region governments provide it in other areas. Local governments are well-suited to providing smaller local services such as fire protection, trash pickup and street sanitation, safe market facilities, libraries, parks and recreation, local roadways, local transport, street lighting, public toilet facilities and local drinking water outlets. Public goods and services that are shared and required by the entire Myanmar population and that are costly to install and require significant infrastructure investment (such as regional and national highways, airports, rail services, and a national electricity grid), may be best managed centrally.⁶⁹ Gender equality will be advanced by a model that ensures the rapid development of infrastructure to enable uniform delivery of public goods and services throughout Myanmar. This model is favoured for post, telegraph and communication systems by the Ethnic Armed Groups, as stated in their 'Action Plan for the Establishment of Democratic Federal Union'.

69 Gerard McCarthy, *Building on What's There: Insights on Social Protection and Public Goods Provision from Central-East Myanmar*, 2016. Online at <https://www.theigc.org/wp-content/uploads/2016/09/McCarthy-2016-working-paper.pdf> 12-14 In a survey of 1,000 participants in central-east Myanmar, the majority of participants believed that the Union government should be responsible for electricity and road construction.

OPTION 2

States and regions have complete **autonomy** over the delivery of public goods and services. This may not be the most advantageous model for the advancement of gender equality. The provision of public goods and services is essential for women and girls, as discussed above, and states and regions do not currently have the capacity for major infrastructure development.

KEY RECOMMENDATIONS

- ✓ The delivery of public goods and services is divided between the Union government and state and region governments.
- ✓ The Union government is responsible for funding and organizing large infrastructure projects; state and region governments are responsible for infrastructure maintenance.
- ✓ State and region governments are responsible for smaller local services.

FISCAL ARRANGEMENTS

Myanmar's economic development, including women's economic empowerment, has been stifled by Western economic sanctions, centralization, unequal ownership and distribution of resources, inadequately performing state-owned enterprises that dominate the economy, lack of diversification and a lack of infrastructure investment. The economy has, however, begun to grow with recent reforms. Fiscal arrangements, including the division of revenue between the Union government and the state and region governments and the model of taxation adopted, are central to the effective and efficient functioning of a federal model and to the advancement of gender equality.

Tax systems are not gender-neutral, and how revenue is collected and divided between the Union and state and region governments is critical to the capacity of state and region governments to effectively undertake the functions allocated to them, including the advancement of gender equality.

SOURCES OF REVENUE

There are two main sources from which the Union and the state and region governments collect revenue and will continue to utilize as revenue sources within a federal model. The first source is taxes and duties. The second source is contributions from the state-owned economic enterprises.⁷⁰ Revenue is also generated from loans, international aid and printing money, but these sources are not discussed.

Taxes and duties

There are 18 taxes and duties within four main categories that are collected primarily by the Union, but also in smaller part by the state and region governments. The first category is income tax,

70 Policy Options for Improving the Performance of the State Economic Enterprise Sector in Myanmar. Online at: https://www.iseas.edu.sg/images/pdf/ISEAS_Working_Paper_2015_No.%201_Policy_Options_for_Improving_the_Performance_of_the_State_Economic_Enterprise_Sector_in_Myanmar.pdf

which in developed countries typically forms 40 to 75 per cent of the national income. However, the rate is often much lower for developing countries because of insufficiently developed tax collection mechanisms, the presence of large informal economies and much smaller per capita incomes.⁷¹

In Myanmar, the income tax takes the form of a graduated tax with 6 bands from 0 per cent to 25 per cent, includes salaries, profession, business, property and capital gains. No tax is payable on the first 4.8 million kyat.⁷² There are tax-free family allowances of 1 million kyat for a spouse or parent, and one-half million kyat for a child under 18. A tax of 25 per cent is imposed on all incorporated businesses and companies and on state owned economic enterprises and cooperatives. There is a tax exemption for small- and medium-sized businesses for three years, provided their income is less than 10 million kyat. In the 2014/2015 tax year, income tax accounted for 48 per cent of the total tax and duty revenue collected.

The second category is a tax on domestic production and public consumption. The most significant tax in this category is the commercial tax, which is a broad-based sales tax of 5 per cent placed on both goods and services. Higher tax rates are placed on tobacco, alcohol, timber, precious stones, cars and fuel. No commercial tax is placed on major food staple items, basic household goods, medicines or other essential items. In 2014/2015, commercial tax collections accounted for 40 per cent of the total tax and duty revenue.

The third category of taxes is customs duties, which are levied on imports and exports. The fourth and final category is taxes on public utilities, including land, water, embankment, extraction of forest products, minerals, fisheries, rubber, oil and gas, minerals, jewellery, telecommunications and electricity.

State-owned enterprises

State-owned enterprises, particularly those that manage natural resources, oil, gas, timber, gemstones and other minerals, represent a significant portion of state revenue. Some revenue is collected through the 25 per cent tax imposed as discussed above. However, state-owned enterprises also make non-tax contributions into state revenue. Additionally, some individual state and region governments have established their own fees and taxes related to natural resources. Some companies make corporate social responsibility payments.⁷³

MEANS OF COLLECTING REVENUE

In a new federal model, it must be determined which entities — Union, the states and regions, or both — will collect taxes and other sources of revenue. Collection of revenue can be centralized or decentralized or a combination of both. Each region or state can raise and collect most of its own revenue, or the central government can be responsible for most revenue collection (as in Australia and Germany where the central government collects 60 to 75 per cent of the total state revenue). Alternatively, both central and state and region governments can collect specific identified revenue.

71 See Niedermeier and Ridder n 3, 55.

72 *Union Tax Act* 2016. Online at: <http://www.mof.gov.mm/en/content/internal-revenue-department>

73 Thet Aung Lynn and Mari Oye, *Natural Resources and Subnational Governments in Myanmar* 2014, 7. Online at: <https://asiafoundation.org/resources/pdfs/NaturalResourcesandSubnationalGovernmentsinMyanmar.pdf>

The more the states and regions can fulfil their obligations from their own income and resources, the greater their autonomy. However, while in a federal model the state and regions own sources of income should ideally generate a substantial part of their revenue, not all have similar stores of natural resources or equal potential to earn income. Many federations with dispersed natural resources and disparity between rich and poor areas favour a balance of authority, where the central government collects a larger proportion of the revenue while states and regions collect smaller sources, such as land and property taxes, liquor licenses, court fees, driving licenses, businesses licenses, hawkers at markets, fishing, shooting and fees charged by local institutions from households for water supply, electricity supply and for general works.

However, in the Myanmar context, because of the strength of regional demands for autonomy, a more evenly balanced model of collection may be appropriate. If states and regions have primary tax and revenue collection authority, gender equality objectives must be mandated in law. The Ethnic Armed Groups recommend that the collection of revenue is a shared power in their 'Action Plan for the Establishment of Democratic Federal Union'.

MEANS OF DISTRIBUTING REVENUE

The means of distributing the collected revenue is central to the successful functioning of a federal system, and is also central to the advancement of gender equality. It is important to design a system that is harmonious, does not diminish the autonomy of the states and regions and is economically efficient and fair. It must consider gender inequalities in the economy and how those inequalities interact with other forms of social exclusion. Resources must be allocated to sectors where women are primarily located, such as agriculture and the informal economy. While the details of fiscal distribution are complicated in a federal model, in broad terms there are two main forms of fiscal transfers, vertical fiscal transfers and horizontal fiscal transfers.

Vertical fiscal transfers refer to the distribution of funds from a central government to the state and region governments after the central government has collected some or all the country's income. Vertical fiscal transfers can be unconditional, which refers to an amount of revenue allocated to each state and region to meet their general financial obligations, regularly distributed on a predetermined date. Alternatively, they can be conditional, which means an amount of revenue is allocated to a region or state government to fulfil specific tasks with clearly laid out purposes.

There is a range of other forms of vertical transfers, such as transfers for more general purposes, co-financing of single projects (where the central government and the state or region government share the costs of a particular project), or transfers in broad areas such as health (where specific discretion remains with the central government). Currently, the Union government makes both conditional and unconditional transfers to the states and regions.⁷⁴

Horizontal fiscal transfers refer to the redistribution of revenue generated by one state or region to another poorer state or region. Economic disparities between states and regions have consequences for the overall development of the country as a whole, and most federal models include mechanisms for horizontal transfers. In many countries, horizontal fiscal transfers are administered by the central government. There are three main methods of horizontal fiscal

74 Cindy Joelene "Myanmar Attempts to Fiscal Decentralisation Reform" in *Collection of Papers on Myanmar's Financial Sector* 2016, 12.

transfer. The first method is the redistribution of collected revenue based on specific factors that reflect the population's needs. Factors typically include population numbers (the greater the population, the larger the amount of revenue transferred), poverty rates (the greater the poverty, the larger the amount of revenue transferred) and regional gross domestic product. The second method is targeted spending programmes that prioritize weaker states and regions and fund projects using revenue collected from other states and regions by the central government. The third method is fiscal equalization, which transfers revenue collected from states and regions by the central government to other states and regions until the economic power of all is equal.

ADVANCING GENDER EQUALITY THROUGH FISCAL ARRANGEMENTS.

Fiscal Equalization

Fiscal equalization aims to achieve equal economic power in all states and regions. Equalization enables the equal, nation-wide provision of services for women, including access to health-care facilities, housing, sanitation, drinking water, electricity, social welfare and services for victims of violence. It ensures that poorer regions are not unable to deliver gender equality because they do not have sufficient revenue and resources to do so.

Horizontal transfers, which redistribute resources and revenue from richer states and regions to poorer states and regions, are the most advantageous approach to fiscal arrangements for the advancement of gender equality in a federal model. A horizontal transfer system requires the identification of transparent indicators for fiscal transfers. Example indicators include the level of poverty measured by household income, the availability of safe drinking water, sanitation facilities and levels of health and education.

Anand and Chakraborty recommend including designated gender indicators to drive some fiscal transfers on the basis of gender inequalities. They use the example in India of uneven sex ratios caused by son preference in some Indian states. They propose rewarding states with higher sex-ratios, incentivizing states to improve them. Other gender indicators could include maternal mortality, education levels of women and girls and levels of female political representation. Recognizing the strong need for state and region autonomy to secure the peace process, it may be necessary to give control to states and regions to determine the level of equalization. In such an approach, clear and fair mechanisms of minimum horizontal fiscal transfers should be mandated. Notably, in a recent study of 200 participants from government, civil society and other representatives of Mon state, 96 per cent favoured richer states and regions supporting the development of poorer states and regions.⁷⁵

Natural Resources

The most controversial — yet central — aspect of fiscal arrangements that must be negotiated in a federal model, and which will (indirectly) impact on the capacity of Myanmar to introduce and sustain gender equality reforms, is the distribution of the income generated from natural resources. The Constitution makes the Union the ultimate owner of all natural resources.⁷⁶ In Myanmar, natural resources have, over many decades, been managed and taxed by the Union government through line Ministries and state-owned enterprises. However, many natural resources are in regional areas. Local communities have, over a lengthy period, perceived

75 Hanns Seidel Foundation, *Research Report: Seminar on Federalism, Peace Process and Coordination between Political Parties and CSOs* 2017, 3.

76 *Constitution of the Republic of Myanmar* 2008, Article 37.

themselves as lacking control over the management of those natural resources and as not benefiting from the profits generated. Instead, they have borne the burden of production while profits have accrued to the Union.⁷⁷

States and regions are therefore, understandably, resistant to sharing revenue from resources extracted in their region or state. States and regions stripped of resources over preceding decades may not strongly support a system of horizontal transfers based on natural resource revenue collected by the Union government. Most of the ethnic minority women leaders interviewed for this report did not support fiscal equalization policies based on the distribution of revenue from natural resources. All indicated a tension between their ethnic loyalties and the collective interests of women across all ethnic groups. Although some informants did support some level of natural resource sharing, informants uniformly argued that the collective needs of their own communities came before the achievement of gender equality across Myanmar.

Gender equality, however, is dependent on some form of balancing and sharing of natural resource revenues in order to raise the standard of living across Myanmar, to boost economic opportunities and to reduce conflict and violence.⁷⁸ States and regions that do not have the same wealth of resources or ability to generate income as other states and regions must be subsidized by the collective pool of resources. Women, who are often caregivers and economically dependent, suffer disproportionately from unequal living conditions, and must have access to comparable benefits regardless of where they live. Providing some autonomy to states and regions to determine the level of equalization from revenue streams from natural resources may be necessary. Clear and fair mechanisms of minimum equalization must be mandated.

Taxation

Tax and benefit systems affect women and men differently, often magnifying existing economic inequalities between men and women. In Myanmar, the income tax, commercial tax and corporate tax all have gender implications that should be considered in a new federal model of governance.

Income tax in Myanmar contains positive features for the advancement of gender equality. First, it is an individual-payer system, so women's incomes are not combined with their husband's or family's for tax purposes. This is beneficial, as systems that combine the incomes of spouses or families often impact on women disproportionately because combining the incomes often results in increasing the tax rate on the second income, usually the woman earner.

Second, income tax is graduated so that those with higher incomes bear a greater share of the tax burden than those on low incomes. The first band of taxable income is a low 5 per cent. As women earn substantially less than men, this means that they are paying less income tax while those with the highest incomes pay more. Third, the level of non-taxable income was raised to 4.6 million kyat in 2016, which is a welcome measure for advancing gender equality because women, with lower incomes, will be advantaged by a higher tax-free threshold. Fourth, the

77 Thet Aung Lynn and Mari Oye, *Natural Resources and Subnational Governments in Myanmar: Key Considerations for Wealth Sharing. Policy Dialogue Brief Series No 4*. Asia Foundation 2014 10.

78 Online at: <http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/nrgi-undp-natural-resource-revenue-sharing.html>

three-year tax-free exemption for small and medium businesses is beneficial for women who are more likely to be in small businesses. It also encourages women operating small businesses to formalize their businesses. Overall, women would benefit from raising the top-end graduated taxes so that those with higher incomes pay more tax and from raising the tax-free threshold even further.

The main feature of the income tax model that may result in an implicit gender bias is that the primary income earner receives a tax-free threshold for a dependant spouse, parent and children. Although this is intended to strengthen the fairness of the system, it also results in a disincentive for second earners — who are typically women — to enter the workforce as the family may lose some or all the benefit of these provisions. As a result, the second (dependant) spouse is likely to carry out unpaid work in the home or in a family business rather than work for pay. This reinforces gender roles, including encouraging women to take part-time or low-paid work or taking increased responsibility for unpaid work.⁷⁹ However, removing the family benefit may disadvantage families where one spouse must stay at home to care for young children.

A **commercial tax** often impacts on the poor more significantly because they spend a greater portion of their income on goods and services than those with greater resources. Additionally, research suggests that women consume a greater proportion of services that benefit family health, education and nutrition while men spend more of their income on personal goods.⁸⁰ Therefore, exempting socially desirable goods, such as basic necessities and medicines, and placing higher taxes on goods such as cigarettes and alcohol is a positive step for advancing gender equality. In Myanmar, the commercial tax has a substantial list of exemptions, including many essential and staple products that are beneficial to women. Exempting more items from the commercial tax will benefit women and advance gender equality.

A **corporate tax** is often preferential yet under-taxed. Since men dominate this sector (women business owners dominate the unincorporated sector), it can lead to considerable disadvantage for women. In Myanmar, however, the corporate tax rate is 25 per cent, while unincorporated businesses are subject to the graduated bands that have 25 per cent as the highest rate. This means that women are not directly disadvantaged by operating small- and medium-sized unincorporated businesses. However, this may encourage women business owners to remain unincorporated, leading to differences in accumulated capital for women and men.⁸¹ The three-year tax exemption for small- to medium-sized businesses is, however, a positive measure for women working to grow small businesses.

Gender Budgeting

Gender budgeting refers to the process of conceiving, planning, approving, executing, monitoring, analysing and auditing budgets in a gender-sensitive way. It involves analysing a government's actual expenditures on and revenues from women and girls as compared to men

79 UN Women, *Gender Equality and Taxation in Vietnam. Issues and Recommendations* 2016, 30. Online at http://www2.unwomen.org/media/field%20office%20eseasia/docs/publications/2016/12/gender%20and%20tax%20final%20print_en.pdf?vs=1812

80 Caren Grown, *What Gender Equality Advocates Should Know About Taxation* 2005 17.

81 Alastair Thomas and Pierce O'Reilly, "The Impact of Tax and Benefit Systems on the Workforce Participation Incentives of Women", OECD Taxation Working Papers, No. 29, 2016, OECD Publishing, Paris. Online at <http://dx.doi.org/10.1787/d950acfc-en>

and boys, and rectifying any inequalities. In a federal model, gender budgeting is an important means of securing the advancement of gender equality and also benefiting society as a whole.⁸²

It is appropriate that governments implement gender budgeting, as the positive outcomes that it can generate are unlikely to be achieved by individual citizens, who typically prioritize the immediate needs of the household. For example, research suggests that educating mothers results in a healthier diet and lifestyle for children, reducing the need to spend public funds on children's health.⁸³ Research also suggests that if girls attend school, then society benefits because they are much more likely to achieve their productive potential.⁸⁴

In a federal model, gender budgeting could occur at the Union, state and region levels and should be mandated by law. In India, for example, gender budgeting was adopted at the federal level but not mandated at the state level. However, most Indian states have, nevertheless, adopted gender budgeting with positive results.⁸⁵

Responsible business and responsible investment

A growing body of evidence indicates that utilizing the skills and talents of men and women is beneficial for the growth and profitability of business enterprises and for society in general. Women represent an incredible talent pool and national resource.⁸⁶ The opportunities for investment and business creation in Myanmar have rapidly increased with the enactment of investment-friendly laws and the expansion of the market. It is important that governments, companies, businesses and employers understand that they make greater economic gains when businesses employ or support a representative proportion of women. Additionally, ensuring that businesses and investments are conducted responsibly within a culture of respect for human rights, democratic governance and in forms that will advance the achievement of gender equality will strengthen Myanmar's economic development.⁸⁷

Myanmar has a wealth of untapped natural resources, with a history of land grabbing and human rights abuses. Large investment projects have led to land confiscations negatively impacting on housing, health, education and livelihoods with a disproportionate effect on women and girls.⁸⁸ Effective due diligence must be required of businesses at all levels. The UN Guiding Principles for Business and Human Rights can provide standards for the Union government to legislate for all

82 Jasmine Burnley (Oxfam), Melanie Hilton (ActionAid) Poe Ei Phyu (Oxfam) and Nilar Tun (CARE) *A Case for Gender Responsive Budgeting in Myanmar* 2016. Online at: https://myanmar.oxfam.org/sites/myanmar.oxfam.org/files/file_attachments/GRbudget%20policy%20brief%20ENG%2011MARCH2016%20FOR%20PRINT.pdf

83 Janet Stotsky (IMF), *Gender Budgeting: Fiscal Context and Current Outcomes* 2016 9. Online at <https://www.imf.org/external/pubs/ft/wp/2016/wp16149.pdf>

84 See Stotsky n 84, 9.

85 Janet Stotsky and Asad Zamin (IMF), *The Influence of Gender Budgeting in Indian States on Gender Inequality and Fiscal Spending*, 2016. Online at: <https://www.imf.org/external/pubs/ft/wp/2016/wp16227.pdf>

86 Katrin Elborgh-Woytek, Monique Newiak, Kalpana Kochhar, Stefania Fabrizio, Kangni Kpodar, Philippe Wingender, Benedict Clements, and Gerd Schwartz, *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity* 2013 Online at <https://www.imf.org/external/pubs/ft/sdn/2013/sdn1310.pdf>

87 <https://www.ihrb.org/pdf/Occasional-Paper-1-Burma-Myanmar-FINAL.pdf>

88 Myanmar Centre for Responsible Business and the Danish Institute for Human Rights, *Myanmar Human Rights and Business Country Guide*, Online <http://www.humanrights.dk/projects/myanmar-centre-responsible-business>

states and regions.⁸⁹ The Principles require that investing businesses make a policy commitment to respect human rights; to develop human rights due diligence processes; to identify, prevent, mitigate and account for its environmental impacts and to process redress for any adverse impacts they cause or to which they contribute, including gender-based and sexual violence.⁹⁰

In addition to ensuring that businesses respect human rights, there are ways in which the benefits of large businesses and foreign investment can be distributed to local communities. Companies operating in a region, for example extracting and processing natural resources, can be compelled to fund infrastructure or public services in the region or community in which they are operating or beyond. Infrastructure projects identified by local women can be prioritized, such as providing households with toilets (25 per cent of households do not have access to toilets), establishing maternal health care facilities (which rural areas lack)⁹¹ or establishing family planning centres (there is currently poor access to contraception in rural areas).

Alternatively, they can be encouraged to fund infrastructure or public services as part of their corporate social responsibility. Local communities can be offered a share of the resources, for example, low cost access to natural gas. Companies can also be compelled to meet local employment targets from a gender equality perspective. For example, employment targets can include a mandated quota for women.⁹²

KEY RECOMMENDATIONS

- ✓ Introduce clear, transparent, equitable methods of revenue collection and distribution.
- ✓ Strengthen the model of taxation by first introducing a greater tax-free band for all earners, coupled with rethinking tax credits for dependent spouses so as not to discourage female spouses from entering the paid workforce. Second, extend the tax-free benefit for small- and medium-sized businesses.
- ✓ Introduce fiscal equalization or fiscal transfers that ensure gender equality measures can be distributed uniformly throughout the country.
- ✓ Consider the use of gender equality incentives, such as extra funding for meeting gender equality targets.
- ✓ Introduce gender budgeting at all levels of government.
- ✓ Require, by law, due diligence by businesses and companies in accord with the UN Guiding Principles for Business and Human Rights.
- ✓ Require companies and state-owned enterprises operating to extract natural resources to fund gender equality infrastructure projects and to meet gender equality employment targets.

89 UN Guiding Principle 7 UN Guiding Principles on Business and Human Rights. Online at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

90 UN Guiding Principle 7 n 90.

91 Latt, Nyi Nyi et al. "Healthcare in Myanmar." (2016) 78(2) *Nagoya Journal of Medical Science* 123–134.

92 Andrew Bauer, Paul Shortell and Lorenzo Delesgues, *Sharing the Wealth: A Roadmap for Distributing Myanmar's Natural Resource Revenues*, National Resource Governance Institute, 2016, 7.

EQUAL GENDER REPRESENTATION IN PUBLIC OFFICE

NUMBERS OF WOMEN IN ELECTED PUBLIC OFFICE

Myanmar consists of a central government (the Union) and subnational governments in 14 states and regions, five self-administered zones and one self-administered division. Each state and region is made up of districts (a form of middle-tier administration), which is, in turn, constituted by townships that are groups of urban wards, towns and village tracts. The lowest levels of government office are in townships, and it is at the township level that many government functions take place (such as birth registration, land registration and local tax collection).⁹³

Women need better representation in public office in Myanmar at all levels, although this improved at the Union, state and region levels in the 2015 general election. In the Union parliament, women now hold 13 per cent of elected seats, a significant achievement given that only 231 candidates out of 1,733 were women.⁹⁴ As indicated in Table 3, there are 43 women parliamentarians in the Pyithu Hluttaw and 23 women parliamentarians in the Amyotha Hluttaw; 10 per cent of the total seats.⁹⁵

Historically, all of the military-appointed seats to the Union parliament were men, but in January 2014 the military appointed two females to the Pyithu Hluttaw.⁹⁶ Daw Aung San Suu Kyi is the only female member of the 20-person cabinet.⁹⁷ The speakers and the deputy speakers are male in both the Pyithu Hluttaw and the Amyotha Hluttaw.⁹⁸ Myanmar's representation of women in the Union parliament is comparable to other ASEAN countries, where Thailand has 6 per cent, Cambodia 19 per cent and the Philippines at 27 per cent (the greatest per cent of women parliamentarians in ASEAN countries).⁹⁹ The global average is 22 per cent; there are six countries with no women in parliament. Rwanda has the most women parliamentarians (64 per cent).¹⁰⁰

After the 2015 election, women's representation in the state and region parliaments is similar to the Union parliament. Overall, women occupy 13 per cent of elected seats and 10 per cent of the total seats.¹⁰¹ There is, however, considerable variation between the states and regions; women make up 25 per cent of the Mon state parliament, while there are no women parliamentarians in the Chin, Kayah or Rakhine parliaments. The Mon parliament is the only region or state

93 Asia Foundation, *State and Region Governments in Myanmar. Policy Dialogue Brief Series. No 1* 2013, 2

94 Paul Minoletti, *Gender (IN)Equality in the Governance of Myanmar. Past, Present and Potential Strategies for Change*, Asia Foundation: April 2016, 7.

95 Minoletti n 95, 7.

96 See Myanmar Times. Online at <http://www.mmtimes.com/index.php/national-news/17910-woman-mps-up-but-hluttaw-still-90-male.html>

97 Online at: <http://www.president-office.gov.mm/en/?q=cabinet/union-government&page=1>

98 Online at: <http://www.president-office.gov.mm/en/?q=cabinet/union-government&page=1>

99 Women in National Parliaments. Current to 30 December 2016. Online at: <http://www.ipu.org/WMN-e/classif.htm>

100 Women in National Parliaments. Current to 30 December 2016. Online at: <http://www.ipu.org/WMN-e/classif.htm>

101 Minoletti n 95, 7.

parliament to have a female speaker of the house.¹⁰² There are two female chief ministers (one in the Tanintharyi region and one in Kayin state).¹⁰³

Women's representation decreases at the lower local levels of governance. The position of ward/village tract administrator became an elected position when the U Thein Sein government passed the *Ward and Village Tract Administration Law* 2012. The roles of the administrator are diverse and potentially powerful. The administrator is often the main mediator in petty crimes and civil disputes that cannot be resolved within the family. Additionally, village members who want to apply for a new job, obtain a household certificate, receive a national registration card or conduct a land transaction must first approach their ward and village tract administrator for a recommendation letter. The legislation provides that each ward/village tract administrator is elected through a secret ballot by ten-household leaders, who are themselves elected by heads of households, also through secret ballot. The term is fixed for five years. To date, few women have been elected. This lack of representation is unsurprising given that the electoral roll is restricted to heads of households, invariably men. This results in women's *de facto* exclusion from voting or being elected.¹⁰⁴

Table 3: Women's Representation in Elected Public Office

Level of government	Position	Total		Women	Women as % of total
Union	Pyithu Hluttaw	Elected	330	43	13%
		Appointed	110	2	2%
	Amyotha Hluttaw	Elected	168	23	13%
		Appointed	56	2	4%
	Total	Elected	498	66	13%
		Appointed	166	4	2%
	Cabinet Minister	20		1	5%
State and Region	Parliamentarian	659		84	13%
Union/State/Region combined	Parliamentarian	1150		151	13%
Township*	Administrator	330		0	0

102 Online at: <http://www.irrawaddy.com/news/burma/mon-state-elects-parliaments-first-female-speaker.html>

103 Online at: <http://www.mmtimes.com/index.php/national-news/19818-meet-your-chief-ministers.html>

104 Helene Kyed, Annika Harrison & Gerard McCarthy, *Local Democracy in Myanmar. Reflections on Ward and Village Tract Elections in 2016* (Danish Institute for International Studies, 2016). Available at http://pure.dii.dk/ws/files/663836/Myanmar_Elections_WEB.pdf

Level of government	Position	Total	Women	Women as % of total
Ward/Village Tract**	Administrator	16785	42	0.25%

* Figures from 2014 Asia Foundation. Women's Participation in the Subnational Governance of Myanmar.

** Figures from Roell, UNDP, 2015. These figures represent 2014 results. Results from the 2016 election were not available online.

Female judges slightly outnumber male judges at the lowest levels of the formal court system.¹⁰⁵ While this is positive, at the local level most disputes are resolved outside of the formal court system in informal community-based dispute resolution mechanisms that are mostly staffed by men.¹⁰⁶ The Constitutional Tribunal, a critical judicial institution for enforcing women's rights, has nine members, two of whom are women. One-third of High Court judges are women. However, the Supreme Court has between seven and 11 judges, all of whom are currently men. The judiciary plays a powerful role in upholding and enforcing the Constitution and protecting women's human rights throughout all levels of the court system.

It is important that women are represented on the court system in order to bring diversity to judging and to ensure equality of opportunity and representativeness. The process of judicial appointment and the qualifications required do not favour women as candidates for the judiciary. Qualifications for appointment to the Supreme Court and the Constitutional Tribunal include "a person who has served as a judge of the High Court of a region or state for at least five years" or "a person who has practised as an advocate for at least 20 years" or a person who is, in the opinion of the President, "an eminent jurist."¹⁰⁷ For appointment to region or state courts, the person must have practised as an advocate for at least 15 years.¹⁰⁸ These qualifications requirements disfavour women; women often interrupt their working careers to give birth to children.

BARRIERS TO WOMEN'S REPRESENTATION IN PUBLIC OFFICE

There are a range of reasons for the low representation of women in elected public office in Myanmar at the Union and state, region and local levels.

1. The Constitution mandates that 25 per cent of seats in the Union, state and region legislatures are filled by defence services personnel. Because women are largely absent from the military, this requirement significantly reduces the possible seats they can hold.

¹⁰⁵ Justice Base, *Voices from the Intersection. Women's Access to Justice in the Plural Legal System of Myanmar* UN Women, 2016, 33.

¹⁰⁶ Justice Base, *Voices from the Intersection. Women's Access to Justice in the Plural Legal System of Myanmar* UN Women, 2016, 41.

¹⁰⁷ *Constitution of the Republic of Myanmar* 2008, s301; s310, s33.

¹⁰⁸ *Constitution of the Republic of Myanmar*, s310.

2. The constitutional exclusion of women from public positions “to which they are unsuited”¹⁰⁹ discourages women’s participation in public office, adding to social stereotypes and norms that depict women as unsuited to hold public office.¹¹⁰
3. The Constitution contains no quotas to address the women’s low representation in public office. Quotas and other support for women candidates (financial and technical) can be used to provide women with campaign skills and with the resources required to stand for public office.
4. Elections for the ward administrator, a powerful role in local communities at the village and tract level, indirectly discriminates against women by affording voting power only to heads of households.
5. Females in Myanmar are expected to perform most of the household tasks, which are considerable, particularly in non-urban areas where only 24 per cent of households have water on their own premises and only 34 per cent of households have electricity.¹¹¹ In many communities, men are unwilling to share the domestic work of women who engage in political activities,¹¹² making it difficult for women to juggle family and domestic responsibilities with the heavy workloads required by public office.¹¹³ Women also face criticism for prioritizing political activity over household activity and have low bargaining power within domestic households to offer themselves as candidates.
6. Women lack experience and skills in the responsibilities of public office and often lack confidence in their abilities. Traditional norms ascribe authority to men over women. Women have a low status in religious, social and cultural activities and typically their role is to welcome guests, decorate and prepare food while the men are responsible for leadership and management.
7. Fear of violence, sexual assault and sexual harassment inhibit women’s ability to travel long and short distances. Many public office positions, even local positions, include travel to attend trainings and meetings. Restrictions on women’s travel due to security concerns create a barrier to public office, particularly in remote and hill regions.

IMPORTANCE OF WOMEN’S REPRESENTATION IN PUBLIC OFFICE

Women’s equal representation in public office is important in the Union, state and region parliaments, as ward/tract administrators and in the non-elected roles of local-level villages and township administrations. The equal representation of women ensures that governance and decision-making reflect the views and experiences of Myanmar women. Policies developed by men alone reflect only part of human experience and potential.¹¹⁴ Women also often have

109 Burma’s Lawyers Council, *A Grim Perspective for Burmas Women*. Online at: <http://www.socialwatch.org/node/11603>

110 Oxfam, CARE and ActionAid, *Women and Leadership in Myanmar*, 2014. Online at: <https://www.care.org.au/wp-content/uploads/2014/12/Myanmar-Women-and-Leadership-in-Myanmar-Report.pdf> 14.

111 Burma’s Lawyers Council n110, 26.

112 Burma’s Lawyers Council n110, 26.

113 Devin Joshi and Kara Kingma, “The Uneven Representation of Women in Asian Parliaments: Explaining Variation across the Region” (2013) 12(4) *African and Asian Studies* 352.

114 L Edwards & M Roces, *Women’s Suffrage in Asia: Gender, Nationalism and Democracy* (Oxford: Routledge, 2004) 1.

greater knowledge and understanding on activities that women spend more time on than men, for example, selling produce in markets, microfinance, children's education, access to drinking water sources, washing and sanitation facilities, and caring for the sick and elderly. Research conducted on the Yangon region parliament indicated the male parliamentarians were focused on road building and were unwilling to divert funds to issues the female parliamentarians were prioritizing, such as education, health and care for the elderly.¹¹⁵ Other research in Myanmar has indicated that women are less confrontational and better negotiators of solutions that satisfy all parties, develop better relationships with villagers and show greater patience and kindness.¹¹⁶ According to research, involving women increases compliance with any rules made.¹¹⁷

ADVANCING GENDER REPRESENTATION IN PUBLIC OFFICE IN A FEDERAL MODEL

A federal model provides women with many more opportunities to participate in governance because there are more positions available than at the state and region levels. Women may also find it easier to participate in state and region parliaments because their geographic proximity to women's homes lessens the time away from domestic responsibilities, reduces travel and reduces travel-associated security issues for women.

Women may also be more comfortable in decision-making roles that are close to the community in which they live. Similarly, other village and community members may be more accepting of women filling public roles which are vested with less power and authority. Lower-level governance roles may provide a training ground for women who may then have the confidence and skills to run for the Union parliament. Evidence has indicated that women leaders increase their skills rapidly once given the time and opportunity to gain experience. Additionally, research in Myanmar has indicated that the existence of female role models inspires local women to undertake leadership roles.¹¹⁸

However, a federal model, coupled with democratization and decentralization and the increased opportunities it offers, will not be sufficient on its own to secure equal representation of women in public office. A favourable political opportunity structure for the advancement of gender representation in public office is contingent on more than the choice of model of governance. The following measures are therefore recommended:

1. A gender **quota** for Union, state and region parliaments. Although the Constitution does not authorize the use of quotas, the CEDAW Committee in its Concluding Observations to Myanmar in 2008 recommended that gender quotas be adopted¹¹⁹ and the National Strategic Plan for the Advancement of Women 2013-2022 (Myanmar) recommends quotas "to ensure women's participation in decision-making in legislative, judicial and executive bodies."¹²⁰

115 Paul Minoletti, *Women's Participation in the Subnational Governance of Myanmar* Asia Foundation 2014 20.

116 Minoletti n116, 16.

117 Minoletti n 116, 16.

118 Minoletti n 116, 32.

119 See Concluding Comments of the CEDAW Committee: Myanmar (2008) 42nd Session (UN Doc CEDAW/C/MMR/CO/3) [10].

120 National Strategic Plan for the Advancement of Women 2013-2022, 23. Online at: http://myanmar.unfpa.org/sites/asiapacific/files/pub-pdf/NSPAW2013-2022_0.pdf.

Gender quotas are not new to Myanmar; some governance actors have adopted them. CARE Myanmar requires at least 30 per cent of female representation of village committee members and the National Community-Driven Development Project requires that 50 per cent of village committee members are women.¹²¹ Quotas not only increase the numbers of women in public office, but create an expectation that women should be part of the governance model.¹²² Evidence has indicated that given the time and opportunity to gain experience, women leaders rapidly increase their skills.¹²³

In establishing a new federal model, the electoral system as laid out in the Constitution must be either rewritten or significantly modified. This presents an opportunity to include in the Constitution a quota mechanism for women's political representation.¹²⁴ A gender quota can be mandated for elections at all levels of governance or, alternatively, state and regions can be left to introduce quotas themselves.¹²⁵ In Mexico, the central government mandated a quota for all levels of elected government, but left states to determine the design and enforcement of the quota. This led to significant differences across the states in terms of women's representation. However, over time representation has increased in all states despite the differing approaches taken.¹²⁶

There are two types of parliamentary gender quotas. The first is a **reserved seat quota**, which means that a certain number of parliamentary seats are reserved exclusively for women. The reservation of a minimum of 30 per cent of seats is recommended, as women are more likely to participate and to actively pursue gender equality agendas if a critical mass of at least 30 per cent is reached.

The second is a **candidate quota**, which means that each political party is required to have a minimum percentage of female candidates. Political parties are organizations with their own histories, traditions, rules and operating procedures, which may limit or block gender equality reforms. Women's political opportunities often depend on the party leadership's priorities. A candidate quota forces party gatekeepers to nominate women that can challenge male dominance within a party.

In a "first past the post" electoral system (in which the candidate with a plurality of votes wins the election), such as what Myanmar currently has, candidate quotas are less effective than parliamentary quotas because women may be either relegated to seats unlikely to win or simply not receive enough votes to gain seats. This occurs if there is opposition to women holding public office. However, the 2015 general election results, in which a similar percentage of female candidates that ran were elected, suggest that a candidate quota might be successful in the Myanmar context.

121 Minoletti n 116, 34.

122 David Williams, "What's So Bad About Burma's 2008 Constitution?" in Melissa Crouch and Tim Lindsey (eds) *Law, Society and Transition in Myanmar* (Oxford: Hart Publishing, 2014).

123 Sang Hnin Lian, "Gender Gap and Women's Political Participation in Burma/Myanmar" (2015) <http://burmalibrary.org/show.php?cat=2235>

124 Quotas have been recommended by a number of interested parties, and were most interviewees' favoured mechanism.

125 Fernanda Correa, *Federalism and Gender Quotas in Mexico: Analysing Proprietario and Suplente Nominations* (2014) 50(3) *Representation* 321, 322.

126 Correa n 126, 321.

2. Reform the *Ward and Village Tract Administration Law* 2012 in order to ensure universal suffrage. The current system of voting for the administrator is restricted to heads of households, effectively excluding women from both voting and from being elected.
3. It is critical to complement quotas and other measures with training in a variety of skills, both to equip women to enter elections as candidates and to participate meaningfully in the Union, region, state and local governance bodies if they are elected. This can prepare women to take up the greater opportunities for political representation offered by federalism. Trainings must be offered in circumstances and at times when there is a safe means of travel for women.¹²⁷ Women should be encouraged to participate in non-governmental organizations, as they offer women opportunities to gain skills, experience and confidence to engage effectively in public settings.¹²⁸

KEY RECOMMENDATIONS

- ✓ Introduce gender quotas for Union, state and region elections mandated in the Constitution.
- ✓ Reform the *Ward and Village Tract Administration Law* 2012 to ensure that women can vote and run for the role of town administrator.
- ✓ Provide women with training to equip them to serve in public office.

SECURITY FOR WOMEN AND GIRLS

Violence against women goes to the heart of women's equality. In Myanmar, violence against women and girls is pervasive and widespread.¹²⁹ There has been sexual violence against women and girls in conflict, with low rates of prosecution.¹³⁰ Violence impacts on all areas of the women's and girls' lives, including health, housing, education and employment. Fear of sexual assault and sexual harassment inhibit the ability of women to travel both long and short distances, particularly in conflict zones restricting. This restricts their ability to work, to participate in non-governmental organizations, to run for public office and to maintain their relationships with extended family.

127 Minoletti n 116, 37.

128 Minoletti n 116, 29.

129 See Gender Equality Network, *Behind the Silence: Violence Against Women and Their Resilience Myanmar Research Report*, 2015, Yangon which found that over 50 per cent of the study sample of women in Yangon, and Mawlamyine had experienced sexual or other violence. There is also documentation of sexual violence in conflict and post-conflict settings between the Myanmar defence services and ethnic groups. Burma League of Women, *Same Impunity, Same Patterns*, 2014 Online at: http://womenofburma.org/wp-content/uploads/2014/01/SameImpunitySamePattern_English-final.pdf Burma League of Women, *if They Had Hope They Would Speak*, 2014 http://womenofburma.org/wp-content/uploads/2014/11/VAW_Iftheyhadhope_TheywouldSpeak_English.pdf.

130 Women's League of Burma, *Same Impunity, Same Patterns*, January 2014, .8, 11; Engy Abdelkader, "Myanmar's Democracy Struggle. The Impact of Communal Violence Upon Rohingya Women and Youth" (2014) 23(3) Pacific Rim and Policy Law Journal 511, 524.

Federalism is favoured as a tool for conflict resolution because of its capacity to give autonomy to ethnic minorities and thereby end ethnic conflict. It is a primary reason for the support for a federal model for Myanmar. However, it is important to negotiate mechanisms to prevent violence against women and girls within the new federal model. The negotiation of a peace agreement, supported through a federal model of governance, will reduce the conflict-related violence that women and girls disproportionately experience. However, the culture of violence that has existed for decades in the conflict zones in both the military and the ethnic armed groups is unlikely to be resolved solely by a peace agreement and a federal model of governance. Additionally, violence against women and girls outside of conflict situations will continue and measures must be introduced to reduce domestic violence, sexual harassment and sexual violence. Therefore, active and strong measures must be adopted and integrated into a federal model in order to ensure a uniformity of legal protections and service delivery across all of Myanmar.

The Constitution would be greatly strengthened by the inclusion of a prohibition of violence against women. Section 445¹³¹ of the Constitution appears to absolve the state for any responsibility for crimes committed against women during conflict, which leaves women vulnerable to violence and sends a message that sexual and other violence against women is acceptable. It is important symbolically that violence against women is seriously regarded by the state with penalties for those who perpetrate violence against women. The removal of Section 445 would signal Myanmar's commitment to the prevention of violence against women.

Additionally, Myanmar should enact a CEDAW-compliant national prevention of violence against women law that prohibits all forms of domestic and sexual violence, sexual harassment and any other form of gender-based violence and that provides targeted funding for victim-support programmes (such as counselling facilities, specialized police units, the creation of shelters and targeted medical facilities).

KEY RECOMMENDATIONS

- ✓ Prohibit violence against women in the Constitution.
- ✓ Fast-track the adoption of a CEDAW Compliant Prevention and Protection of Violence against Women law.
- ✓ Remove Constitution Section 445, which absolves the state for any responsibility for crimes committed against women during conflict.
- ✓ Target budget spending on the provision of services for victims of violence, including shelters, medical facilities and counselling services.

131 "No proceeding shall be instituted against the said Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties." *Constitution of the Republic of Myanmar* 2008, s445.

INSTITUTIONAL PROTECTION AND IMPLEMENTATION OF WOMEN'S RIGHTS

The establishment of women's ministries (units or departments), which create entry points into government for responses to gender equality issues, are an important mechanism within any governance mechanism. Federalism has the potential to maximize the opportunities for the creation of women's ministries by creating more governments and therefore creating more entry points.

Effectiveness depends upon the extent to which women's ministries are institutionalized, the extent to which governments dedicate resources to create and sustain ministries, and the strength of the powers and functions embedded in them. Currently, the Department of Social Welfare is the focal point for gender equality and women's rights in Myanmar. Its mandate is limited, primarily focused on measures of "prevention, protection and rehabilitation" for women, and other marginalized groups who are facing particular social problems.¹³² The creation of women's ministries in Union, state and region governments will give prominence to gender equality issues and provide greater opportunity for gender equality advocates to work within the state.¹³³

Women's ministries should be established through legislation in order to ensure that during fiscal crises, restructuring or if a conservative government is elected, they are not merged into multi-service ministries, subsumed within other diversity agendas, or abolished.¹³⁴ Periods of economic stability are often advantageous for the establishment of women's ministries, but in challenging fiscal times the downward adaptation and marginalization of women's equality agendas becomes common as gender competes for resources with other issues that are often considered more central.¹³⁵

The constitutional creation of a women's ministry is the strongest form of institutionalization. Additionally, women's ministries must be given a broad mandate secured either in the Constitution or through legislation with a right to initiate legislation, a right to comment on legislation and a right to delay and amend legislation that is not positive for women. Further powers to implement gender equality laws, to launch gender equality projects and to further the rights of women would be beneficial. In Germany and Austria, the institutionalization of women's ministries has produced rich and dense gender equality networks and provided political opportunities for the creation of local and regional projects for the advancement of gender equality.¹³⁶

132 Ministry of Social Welfare. Online at <http://www.mswrr.gov.mm/>

133 Sabine Lang and Birgit Sauer, "Does Federalism Impact Gender Architectures? The Case of Women's Policy Agencies in Germany and Austria" (2012) 43(1) *Journal of Federalism* 68,82.

134 Lang and Sauer n 133, 79.

135 Statement by the CEDAW Committee on its Relations with National Human Rights Institutions, 2008, 40th Session at para [3] (UN Doc E/CN.6/2008/CRP.1).

136 Lang and Sauer n 133, 76.

Table 4. Example of the Institutionalization of Women's Issues in a Federal Model

Germany	Nepal
<p>Germany is a federation with 16 states. The Ministry for Family, Seniors, Women and Youth is a cabinet-level ministry with a mandate to develop programmes and initiatives that promote gender equality; to develop programmes to reduce violence against women; to develop programmes to counter stereotyped gender roles; to carry out research and model projects on gender equality policy issues and instruments; to publish the results and support nationwide implementation; to provide assistance for pregnant women in distress and conflict situations; to negotiate gender equality issues and initiatives in the bodies of the European Union, the Council of Europe and the United Nations; and to advocates for the promotion of gender equality internationally. Every federal ministry must have an equality adviser, and the 16 lander and local governments must have an equality officer to promote women's issues.</p>	<p>Nepal is a federation with seven provinces and 75 districts. The Department of Women and Children is placed within the federal government. It has a broad mandate, including assisting formulating policy and legislation on women's development; carrying out functions related to women's empowerment; carrying out functions related to controlling trafficking in girls, prostitution, domestic violence and other offences against women; carrying out functions related to national or international seminars, symposia and conferences on women; and collecting and publishing information on women's development. The Department has 75 district offices throughout Nepal, although there are no focal points within the provincial governments.</p>

KEY RECOMMENDATIONS

- ✓ Establish women's ministries in the Union and state and region governments through the Constitution or through legislation.
- ✓ Establish through legislation a broad mandate for the women's ministries.
- ✓ Identify an adequate, fixed and regular budget for women's ministries.

ESTABLISHING AN INDEPENDENT COURT SYSTEM

Among the roles of the court system is protecting the rights of citizens that are contained in the national constitution and laws, reviewing legislation for its compliance with the constitution and international law (including CEDAW), and holding the state accountable for its actions in relation to the functions assigned to it by the constitution and other legislation.

Without an accessible, fair and independent court system, women will not be able to enforce their rights under the national constitution and laws. A federal model must establish an independent court system that supports the rights of women and girls and enforces the Bill of Rights. An independent judiciary is characterized by an independent process of appointment, a clear separation of judges from the executive once appointed, and security of tenure, which requires a substantial term of appointment and the inability of the executive to remove judges except in cases of gross misconduct.¹³⁷

The current court system in Myanmar is not independent, as judges at all levels are appointed by the Union government. The chief justice of the Supreme Court is nominated by the President¹³⁸ and the President “in coordination with the chief justice” nominates all the judges to the Supreme Court.¹³⁹ The judges of the High Court are also nominated by the President in consultation with the chief justice of the Supreme Court. The Supreme Court of the Union appoints judges who sit on the district courts. Deputy-district judges may also be appointed by the Supreme Court of the Union, depending on the volume of work. In the township courts, judges are also appointed by the Supreme Court. Additional township judges or deputy township judges may be appointed, also by the Supreme Court, depending on the volume of work. In the Constitutional Tribunal, three members are appointed by the President, three members are appointed by the Speaker of the Pyithu and three members are appointed by the Speaker of the Amyotha.

It is not unusual in democratic countries for judges of higher courts to be appointed by the executive government of the day. However, such appointments are typically made in consultation with members of the judiciary and the legal profession, or by a body such as a Judicial Commission staffed by members of the judiciary and the legal profession. An independent process of appointment ensures that judges are neutral and objective and not supportive of a particular viewpoint. If the appointment process is entirely in the hands of the executive, the likelihood is high that judges will be appointed on the basis of political allegiance, thus creating a judiciary that is unlikely to be independent.

KEY RECOMMENDATION

- ✓ Establish a consultative approach for the independent appointment of judges at all levels.

137 Bernd Hayo and Stefan Voigt, “Mapping Constitutionally Safeguarded Judicial Independence—A Global Survey” (2014) 11 *Journal of Empirical Legal Studies* 159.

138 *Constitution of the Republic of Myanmar* 2008, s299(c)(i).

139 *Constitution of the Republic of Myanmar* 2008, s299(d)(i); s308.

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