IF HALF THE POPULATION MATTERED:

A CRITIQUE OF THE MYANMAR NATIONWIDE CEASEFIRE AGREEMENT AND JOINT MONITORING COMMITTEE FRAMEWORK FROM A GENDER PERSPECTIVE

Alliance for Gender Inclusion in the Peace Process (AGIPP)
Policy Brief No.4, May 2018
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<th>Description</th>
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<tr>
<td>AGIPP</td>
<td>Alliance for Gender Inclusion in the Peace Process</td>
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<tr>
<td>CCM</td>
<td>Civilian Ceasefire Monitoring</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination against Women</td>
</tr>
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<td>CPM</td>
<td>Civilian Protection Monitoring</td>
</tr>
<tr>
<td>CSOs</td>
<td>Civil Society Organisations</td>
</tr>
<tr>
<td>DDR</td>
<td>Disarmament, Demobilisation and Reintegration</td>
</tr>
<tr>
<td>EAOs</td>
<td>Ethnic Armed Organisations</td>
</tr>
<tr>
<td>GBV</td>
<td>Gender Based Violence</td>
</tr>
<tr>
<td>GoM</td>
<td>Government of Myanmar</td>
</tr>
<tr>
<td>IDDRS</td>
<td>Integrated Disarmament, Demobilisation and Reintegration Standards</td>
</tr>
<tr>
<td>JICM</td>
<td>Joint Implementation Coordination Meeting</td>
</tr>
<tr>
<td>JMC</td>
<td>Joint Ceasefire Monitoring Committee</td>
</tr>
<tr>
<td>NCA</td>
<td>Nationwide Ceasefire Agreement</td>
</tr>
<tr>
<td>NCCT/SD</td>
<td>Nationwide Ceasefire Coordination Team / Senior Delegation</td>
</tr>
<tr>
<td>NSPAW</td>
<td>National Strategic Plan for the Advancement of Women</td>
</tr>
<tr>
<td>PoVAW</td>
<td>Protection and Prevention of Violence Against Women</td>
</tr>
<tr>
<td>SSR</td>
<td>Security Sector Reform</td>
</tr>
<tr>
<td>TOR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>UNSCR</td>
<td>United Nations Security Council Resolutions</td>
</tr>
<tr>
<td>UPC</td>
<td>Union Peace Conference</td>
</tr>
<tr>
<td>UPDJC</td>
<td>Union Peace Dialogue Joint Committee</td>
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<tr>
<td>WPS</td>
<td>Women, Peace and Security</td>
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SECTION 1: INTRODUCTION

The year 2018 marks a critical moment for a nationally-led effort to increase coordination on the women, peace and security agenda in Myanmar. In 2015, a Nationwide Ceasefire Agreement (NCA) between the Government of Myanmar and the NCCT/SD was signed by eight Ethnic Armed Organisations (EAOs). The signing of the NCA was preceded by a series of bilateral state-level ceasefires through the 1990s and into the contemporary period: narrowly framed to focus on troop movements, violence management, and monitoring. Notably, the initial set of bi-lateral ceasefires from the 1990s neither transformed violent conflict nor built the foundations for sustainable peace. Following this, in 2016 a Joint Ceasefire Monitoring Committee (JMC) was created to oversee the government and signatory groups’ adherence to the supposedly nationwide ceasefire. Three national level Union Peace Conferences (UPCs) were then held: in January, 2016; August, 2016; and May, 2017, respectively, and regional political dialogues have been ongoing.

Despite these advances, however, the issue of gender inclusion remains a critical concern in the current context, and an essential component of advancing the peace process. The nationwide peace process has been largely male dominated, and the social status of women’s participation within it—and in public life more broadly—remains low. In addition, the formal peace process instruments and mechanisms, as well as the ceasefire negotiations themselves have not been inclusive or representative of women. Moreover, the NCA leaves out well-established and obligating measures on international Women, Peace and Security (WPS) norms and standards that have had demonstrable impact on other peace agreements worldwide.

At the same time, the JMC’s Terms of Reference (TOR) is also weak in substantively addressing the issue of gender inclusion and the contributions women can make to sustainable peace, and fails to incorporate international WPS norms and standards as guidelines. These international norms and standards, if substantively integrated into the NCA and JMC, could produce more gender inclusive outcomes in Myanmar’s ceasefire implementation and the peace process more broadly. By failing to take into account women’s experiences of violence and insecurity, as well as

as their needs and contributions towards the building of peaceful societies, the NCA and JMC, as primary formal peacebuilding instruments, risk undermining the sustainability of Myanmar’s peace process.

SECTION 2: SEVEN POINTS OF CONCERN IN THE NCA

We identified seven main points of concerns in the NCA that relate to gender inclusion. While the NCA has reached a stage in which amendments to the text are unlikely to occur, the need nevertheless still exists to understand the missed opportunities for gender inclusion in its drafting.

The seven points of concern are as follows:

Point 1: Lack of reference to international standards

Point 2: Implementation mechanisms excluded women

Table 1: Joint Ceasefire Monitoring Committee- State Level

Table 2: Women’s inclusion in NCA negotiations

Point 3: Inadequate definition of violence and forms of insecurity

Point 4: Weak justice and accountability mechanisms

Point 5: Limited role for civilian participation

Point 6: Lack of reference to female combatants and those supporting fighting forces

Point 7: Lack of gender perspectives include in references to initiatives on health, education and livelihoods

Point 1: Lack of reference to international standards

Our first area of critique is in regard to the NCA’s lack of reference to international norms and standards on WPS. International treaties such as the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), UN Security Council Resolution 1325; UNSCR 2122 UNSCR 2106; and other international humanitarian, refugee and criminal laws guarantee women the right to protection from violence in all situations of armed conflict. Having signed and ratified CEDAW in 1997 (albeit with two reservations), Myanmar’s adherence to these international standards is obligatory—meaning that the Government of Myanmar (GoM), the Tatmadaw, and all armed actors including EAOs are bound by these obligations. These actors are obligated to address


gender discrimination in all its forms and rectify gender inequality through their policy initiatives. All parties to the NCA and the peace process more broadly are obligated by CEDAW (articles 7 and 8); CEDAW General Recommendation 30 (articles 42-47); UN Security Council Resolution 1325 (preamble and article 2); UNSCR 2122 (articles 1, 4, 7, 7 (b), 8, and 14); UNSCR 2106 (articles 1, 5, and 16).

Contrary to established good practice, however, the NCA—the defining document setting forth policy on Myanmar’s peace process—lacks reference to any obligating international standards as well as the various UN Security Council Resolutions that comprise a core part of WPS policy framework. Nor are these international standards integrated within the NCA’s text. Instead, the NCA includes a vague clause stating that a “reasonable number of women representatives” will take part in the political dialogue process (Chapter 5, Clause 23). Nowhere does the NCA coherently define what constitutes a ‘reasonable’ number of women, nor does the document contain a clearly articulated commitment to implementing gender quota. By leaving out these essential components, the NCA text fails to guarantee that proactive measures will be taken to secure women’s substantive participation in the peace process.

5. E.g. the UN Charter (1945); the Universal Declaration of Human Rights (1948); The 1949 Geneva Conventions (of which GoM has signed I, II and III); The 1966 International Covenant on Social, Economic and Cultural Rights (which GoM signed in July 2015); The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (which GoM acceded to in 1997); the 1989 Convention of the Rights of the Child (which GoM ratified in 1991) and its 2000 Optional Protocol on the Rights of the Child in Armed Conflict (which GoM ratified in 2001).
6. E.g. the UN Charter (1945); the Universal Declaration of Human Rights (1948); The 1949 Geneva Conventions (of which GoM has signed I, II and III); The 1966 International Covenant on Social, Economic and Cultural Rights (which GoM signed in July 2015); The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (which GoM acceded to in 1997); the 1989 Convention of the Rights of the Child (which GoM ratified in 1991) and its 2000 Optional Protocol on the Rights of the Child in Armed Conflict (which GoM ratified in 2001).
8. The Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and Ethnic Armed Organizations (2015), Chapter 1, article 1d.
11. As above.
Women’s rights are briefly mentioned in some provisions of the NCA, most notably the ‘NCA Basic Principles.’ These list gender as a category on which discrimination may not take place. While this recognition of gender is a positive starting point, the document does not go on to substantively discuss or define gender in any further clauses. In this way, we see how the NCA gives a ‘nod’ to gender, but does not treat it as a primary or cross-cutting concern.

Similarly, the NCA fails to include language guaranteeing women in Myanmar the right to be free from ‘all forms of violence.’ Instead, the NCA text encompasses a singular focus on sexual violence. Additionally, the NCA lacks reference to other fundamental human rights, including: access to justice; and substantive consideration in Security Sector Reform (SSR) and Disarmament, Demobilisation and Reintegration (DDR). Each of these points will be discussed in further detail below.

**Point 2: Implementation mechanisms exclude women**

AGIPP’s second point of critique involves the implementation mechanisms of the NCA. In addition to gender perspectives being excluded in the language of the NCA text, women continue to be excluded in NCA implementation mechanisms. These mechanisms have included, to date, at the Union level: the Joint Monitoring Committee (JMC); Union Peace Dialogue Joint Committee (UPDJC); and Joint Implementation Coordination Meeting (JICM), as well as JMCs at the State/Region and local levels.

Looking at the gender inclusion rates of these mechanisms, we see that they have not yet made a commitment to 30% women’s inclusion. Rather, the JMC newsletter merely states that, “There have been continuous efforts to increase women’s participation in all levels of Joint Monitoring Committee on Ceasefire.”

**Table 1 outlines the gender composition of JMC at State and Union levels as of September, 2017.**

*Note the dearth of women in decision-making positions referenced below.*

<table>
<thead>
<tr>
<th>Name of JMC</th>
<th>No of Male</th>
<th>% of Male</th>
<th>No of Female</th>
<th>% of Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>JMC-S (Kayin)</td>
<td>14</td>
<td>88%</td>
<td>2</td>
<td>13%</td>
<td>16</td>
</tr>
<tr>
<td>JMC-S (Mon)</td>
<td>12</td>
<td>86%</td>
<td>2</td>
<td>14%</td>
<td>14</td>
</tr>
<tr>
<td>JMC-S (Tanintharyi)</td>
<td>13</td>
<td>93%</td>
<td>1</td>
<td>7%</td>
<td>14</td>
</tr>
<tr>
<td>JMC-S (Shan)</td>
<td>11</td>
<td>79%</td>
<td>3</td>
<td>21%</td>
<td>14</td>
</tr>
<tr>
<td>JMC-S (Bago)</td>
<td>14</td>
<td>100%</td>
<td>0</td>
<td>0%</td>
<td>14</td>
</tr>
<tr>
<td>JMC-U</td>
<td>26</td>
<td>100%</td>
<td>0</td>
<td>0%</td>
<td>26</td>
</tr>
</tbody>
</table>
Table 1: Joint Ceasefire Monitoring Committee Gender Inclusion Rates- State and Union Levels

<table>
<thead>
<tr>
<th>Name Of JMC</th>
<th>President - Reserved Seat for Govt</th>
<th>Vice President (1) - Reserved Seat for EAO</th>
<th>Vice President (2) - Seat for Civilian</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No of Male</td>
<td>No of Female</td>
<td>No of Male</td>
</tr>
<tr>
<td>JMC-S (Kayin)</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>JMC-S (Mon)</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>JMC-S (Tanintharyi)</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>JMC-S (Shan)</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>JMC-S (Bago)</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>JMC-U</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

It is commonly said by those involved in the peace process that there is a lack of ‘capable women’ available to participate in peace process bodies and mechanisms. These statements are used to justify the low levels of women’s participation in the peace process as being rooted in a ‘talent deficit’. This claim, however, is clearly false, particularly when one observes the overtly political and non-rigorous criteria and methods for appointing men to such decision-making roles.

Moreover, the claim that women lack expertise, or even competence, is proven false by the wealth of capacity building initiatives that have produced well-equipped women ready to take on decision-making roles. For example, women’s rights civil society organisations (CSOs) such as Gender Development Institute, Nyein (Shalom) Foundation, the Women’s League of Burma and other sub-national women’s organisations have, in recent years, been actively providing training on ceasefire monitoring, conflict resolution and peace building—the critical foundations for achieving competence in these areas. The Civilian Ceasefire Monitoring (CCM) and Civilian Protection Monitoring (CPM) networks active across the country and led by civil society provide one place to identify women who are ready to be included on the state and local level committees of the JMC. These initiatives have built the capacity of numerous capable women, deepening existing skills and allowing them to gain new knowledge. In turn, these women are now well-placed for active roles in peace implementation processes.

A continuing pattern of low women’s inclusion

A comprehensive analysis of women’s inclusion in the peace process (through early 2016) has been published in AGIPPs first policy brief. Following this, the first Union Peace Conference (UPC) in January 2016 again saw a low women’s inclusion rate. Women constituted 54 out of 700 delegates, making up a total of 7.7% of all delegates. An outcome of this five-day conference was a decision to implement a gender quota for future talks, requiring 30% inclusion of women at different levels of political dialogue but without an implementation strategy. However, as noted by AGIPP, while inclusion rates in the second and third UPC improved somewhat, these conferences failed to achieve the 30% quota, and there was no substantive discussion of or re-commitment to its implementation in future conferences. Moreover, as the UPC lacks an accountability mechanism to ensure compliance with the 30% benchmark, no consequences have been imposed on the UPC for its failure to implement the quota.

These failures to implement the minimum 30% gender quota across all peace bodies, processes and mechanisms represent a broader failure, on the part of the GoM, to adhere to its commitments to international law. By ratifying CEDAW, the GoM demonstrated an acceptance of temporary special measures, such as gender quotas, which are necessary to remedy generations of discrimination against women in all areas of public life. These special measures also apply to Myanmar’s peace

Table 2: Women’s inclusion in NCA negotiations

<table>
<thead>
<tr>
<th>Negotiation body</th>
<th>Inclusion of women</th>
<th>Percentage</th>
<th>Inclusion of women if CEDAW quota applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>NCCT</td>
<td>1 of 16</td>
<td>6.25%</td>
<td>5 of 16</td>
</tr>
<tr>
<td>Senior Delegation (SD)</td>
<td>2 of 15</td>
<td>13.3%</td>
<td>5 of 15</td>
</tr>
<tr>
<td>Union Peacemaking Central Committee (UPCC)</td>
<td>0 of 11</td>
<td>0%</td>
<td>4 of 11</td>
</tr>
<tr>
<td>Union Peacemaking Working Committee (UPWC)</td>
<td>2 of 52</td>
<td>3.8%</td>
<td>16 of 52</td>
</tr>
<tr>
<td>Joint Implementation Coordination Meeting</td>
<td>0 of 16</td>
<td>0%</td>
<td>5 of 16</td>
</tr>
<tr>
<td>Union Peace Dialogue Joint Committee (UPDJC)</td>
<td>3 of 48</td>
<td>6.25%</td>
<td>14 of 48</td>
</tr>
<tr>
<td>Joint Ceasefire Monitoring Committee (JMC-Union Level)</td>
<td>0 of 26</td>
<td>0%</td>
<td>8 of 26</td>
</tr>
</tbody>
</table>
process. AGIPP suggests that a ‘reasonable number of women’ (as noted in the NCA in Chapter 5, Clause 23) is best operationalized with a commitment to ensure that women are included in all aspects of the political dialogues at a minimum of 30% in number. This should be seen as the starting point, not the end point or ceiling to women’s inclusion, as women comprise 50% of the population. There is, therefore, no logical reason to cap their participation at 30%. Table 2 provides an overview of what it would have taken for the NCA to meet the minimum CEDAW standard.

**Point 3: Inadequate definition of violence and forms of insecurity**

The third point of critique involves the inadequate definition of violence included in the NCA. The NCA does not adequately define violence nor reference all forms of violence against women. Instead, it narrowly focuses on ‘sexual violence in conflict’. As AGIPP has argued in previous policy briefs, this narrow focus is problematic, as it fails to uphold women’s right to be free from all forms of violence in post conflict contexts. Moreover, it leaves out the critical necessity of holding perpetrators of violence legally accountable for their crimes. Instead, the NCA’s Clause (9-b, m) merely calls on armed actors to “Avoid any form of sexual attack on women, including sexual molestation, sexual assault or violence, rape and sex slavery.” This language is problematic, in that the call to “avoid” engaging in sexual violence suggests that such behaviour is optional—rather than illegal.

As the CEDAW (GR 30 art 35) has clearly articulated, gender-based violence (GBV) frequently escalates in post-war periods (such as ceasefires), as social norms continue to change. We have seen this pattern play out in contexts around the globe, from El Salvador to Timor-Leste to South Africa to Guatemala. Such transition periods present a vital opportunity to examine the continuum of violence prevalent in the lives of so many women.

Myanmar is no exception. In Myanmar, as in other ‘post-conflict’ contexts, armed actors commit acts of GBV with impunity. As such, the definition of violence used in the NCA, inclusive of GBV, is commensurate with the global evidence about the reality of so-called ‘post-conflict’ periods for women. For many women, violence often increases in the post-war period, and is enacted by men who are known to them – intimate partner violence. Here we see how the forms and sites of violence can change in post-conflict contexts: as warring forces retreat, violence becomes more ‘normalized’ in domestic or other civil settings, creating a host of new problems and threats for women.

An example of this change in the patterns of GBV can be seen in Kayah State, Myanmar. Following decades of violent conflict, the Karenni National Progressive Party (KNPP) and Government of Myanmar signed a bi-lateral peace agreement in Kayah, committing both parties to ceasing

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 hostilities. Despite the de-escalation of active armed conflict, however, women in Kayah still face a myriad of forms of GBV. These take the form of intimate partner violence, violence by military service personnel, and violence conducted through traditional cultural—or customary—practices. Mon and Kayin States serve as further examples of this juxtaposition between ‘formal’ ceasing of hostilities and informal—indeed, embedded—gender-based violence in post-conflict areas. By failing to adopt and develop laws responding to a broad definition of violence that encompasses the multiple forms of insecurities faced by women in conflict and post-conflict environments, women throughout Myanmar remain vulnerable and in a state of constant, ongoing insecurity.

As has been noted elsewhere, a connection exists between GBV and women’s participation in public life. Such violence, when committed in conflict and post-conflict contexts, can lead to the perpetuation of other types of human rights violations. These can include violations such as attacks on women’s rights defenders, which in turn undermine women’s equal and meaningful participation in political and public life. This issue has been addressed in General Recommendation 30 (GR 30).

**Point 4: Weak justice and accountability mechanisms**

Our fourth area of critique is in regard to the NCA’s weak discussion of justice mechanisms. The NCA does not include mechanisms that would secure access to justice and accountability for survivors of GBV perpetrated by state and non-state actors. Several efforts towards strengthening legislation for the prevention of, and response to, violence against women are underway in Myanmar—most notably the Protection and Prevention of Violence against Women (PoVAW) Bill. At time of writing, the PoVAW Bill has been undergoing a review in the national parliament, and has faced considerable obstacles. Until it is fully implemented into law, women and girls will continue to suffer from a lack of legal protection. While the PoVAW would address more comprehensive forms of violence, the narrow focus of the NCA on sexual violence, combined with a culture of impunity, sends a further signal that addressing all forms of violence against women is not a priority for peacebuilding, and that women’s rights are disposable in peace process.

As has been emphasized by the GR 30 (Article 35), the failure to investigate and punish acts of GBV can contribute to exacerbating violence against women in post-war contexts. The NCA’s lack of clear justice and accountability mechanisms is a critical omission, as such justice and accountability mechanisms are imperative during this period to increasing accountability and sustaining the commitments made by signatories to the NCA. Furthermore, the NCA’s discussion of the rule of law is extremely vague. It suggests that signatories agree to “administer rule of law in the ceasefire areas and take action against perpetrators in accordance with the law in coordination with each other” (Chapter 3, Clause 5-h). This reference to the rule of law is made problematic by the fact the 2008 Constitution, as well as a multitude

of Myanmar’s other laws (such as the deeply problematic Race and Religion laws), contradict international human rights standards. In addition, they are grievously outdated (e.g. the insufficient legal protection for women in relation to GBV outlined above). Finally, the NCA’s discussion of the rule of law is weak in that in Myanmar, access to justice is impeded by socio-cultural norms that inhibit women from reporting cases of GBV. The NCA text does nothing to address or remedy the culture of silence and impunity that surrounds GBV.

Additionally, the NCA lacks a gender sensitive perspective on dispute resolution. The only mechanism for resolving issues that may arise during implementation of NCA is a provision to submit cases for investigation by different levels of the Joint Ceasefire Monitoring Committee (Chapter 3, Clause 4). These investigation procedures, however, are opaque. Moreover, there are no provisions in the NCA regarding issues that cannot be settled by the JMC. It is thus imperative to have women who are committed to gender inclusion participating on the JMC, as their voices can help steer the concerns of the JMC toward the gender dimensions of ceasefire violations. The JMC’s committee members should also have clear competence in gender-sensitive investigation, as this capacity will help ensure the physical and human security of men, women, boys, and girls. Finally, the JMC must be committed to bringing perpetrators of violence to military tribunals, in order to promote a broader ‘culture of accountability’ that extends beyond their dispute resolution mandate.

Finally, missing from the NCA are other well-established measures for promoting gender equitable outcomes of peace processes such as: gender sensitive investigation procedures to address gender based violence; gender-sensitive training and the adoption of codes of conduct and protocols for the police and the military; and capacity building of the judiciary.

19. The Karreni National Progressive Party (KNPP), Kayah’s largest ethnic armed group was founded in 1957, and currently operates in Loikaw, Shar Daw, Ho Yar (Pharu So township), and Daw Tamagyi (Demoso township), with troop levels at over 600.
Point 5: Limited role of civilian participation

AGIPP’s fifth point of NCA critique involves the issue of the limited role of civilian participation in the implementation of the peace process. As has been documented elsewhere, civilian participation is an important channel for fostering the inclusion of women in the peace process. The NCA ambiguously states that the participation of “trusted and well-respected individuals” (Chapter 4, Clause 12 a), “ethnic representatives” and “other relevant representatives and stakeholders” (Chapter 5, Clause 22 a) will be sought for inclusion in the JMC as well as in the political dialogues at different levels and stages. Here is another missed opportunity for the NCA to refer to women’s participation within these various categories. Doing so would demonstrate the GoM’s adherence to WPS international norms and standards.

The limited role of civilian participation in peace process implementation is exacerbated by the fact that underlying cultural norms in Myanmar continue to promote the false notion that women are inferior to men. These norms relegate women to the private sphere while elevating men into the public sphere. Given the ubiquitous nature of these norms, we can surmise that the “well-respected individuals” and “ethnic representatives” referenced in the NCA and later selected for participation in implementing mechanisms will predominantly be men. The composition of the NCA implementation committees has already provided evidence in this regard.

Furthermore, the NCA gives no guidance as to the numbers and ratios of the civilian representatives who will sit on the JMC. The failure to clearly specify their participation, as well as the absence of a framework for operationalising the principles of inclusion of civilians in the political dialogue (apart from members of military and EAOs) significantly diminishes the NCA’s inclusiveness.

Supporting women peacebuilders

As Myanmar continues to work toward the achievement of sustainable peace, a range of gender-related security issues persist. AGIPP and its partners have developed a series of recommendations geared toward addressing the numerous issues faced by women in Myanmar’s conflict and post-conflict regions. While policy initiatives, including the implementation of the National Strategic Plan for the Advancement of Women (NSPAW) and the aforementioned PoVAW Bill are underway, the need remains to actively support women’s groups and individual women human rights defenders—who we call ‘women peacebuilders’—in working toward conflict prevention, promoting access to justice, providing assistance to populations affected by insecurity, and engaging in national and international level advocacy.

In carrying out this work, women peacebuilders face numerous challenges. First, there is a persistent risk that the peacebuilding activities of women’s rights defenders in non-signatory areas (i.e., areas still prone to outbreaks of active armed conflict) will be undermined or marginalised. This can occur through actions on the ground as well as through the actions of policy makers and donors who turn their attention away from women working in these contexts, as funding and other support is directed toward signatory (i.e., non-conflict) areas.

Second, while the NCA signatories were removed from the list of unlawful associations prior to their signing the agreement, non-signatories are still deemed unlawful. As a result, the risk of prosecution remains for women (and men) who undertake advocacy, peacebuilding and/or humanitarian assistance activities in connection with non-signatory armed groups or in non-signatory areas. This creates significant barriers to the successful implementation of such work. It also places women peacebuilders at considerable risk, and we have seen several cases of prosecution against women peace and human rights activists have been documented in recent years.

Third, threats and acts of violence directed at women human rights defenders—particularly those working in remote and rural areas—continue with impunity. These threats and violent acts, which have been well documented, point to a clear need for increased attention by policy makers and

others to remediing the entrenched gender injustice that persists among women peacebuilders, in turn, affecting the outcomes of the peace process itself.

**Point 6: Lack of reference to female combatants and those supporting fighting forces**

Women in Myanmar hold diverse positions in the institutions and processes associated with conflict and peacebuilding. In resistance groups and armed forces, women may serve as soldiers, supporters, and combatants. Despite playing these active roles, however, female combatants’ contributions to peacebuilding continue to go unrecognized, as power holders within a male dominated political sphere fail to understand their experiences of gendered insecurity. Moreover, due to the overwhelming volume of armed actors in Myanmar’s complex conflict context, women’s experiences in this sector continue to go unaddressed.

The NCA offers no remedy to this lack of attention to the needs of female combatants. While attention should be made to the reintegration of female combatants in post-conflict contexts, the NCA fails to address this. As the women’s peace movement has long emphasised, sustainable peace can only be achieved when such experiences and needs are made explicit and addressed in peacebuilding bodies, mechanisms and agreements.

Moreover, this lack of gender perspective contravenes commitments made by Myanmar under UNSCR 1889, to which the Government is a party. UNSCR 1889’s Clause 13 states that disarmament, demobilisation and reintegartion (DDR) processes must “take into account particular needs of women and girls associated with armed forces and armed groups and their children”. The NCA’s lack of attention to these particular needs, however, runs contrary to this mandate.

29. The NCA (2015) establishes that ‘no person or organisation associating with the signatories to [the NCA] shall be subject to prosecution under the Political Parties Registration Law or Unlawful Associations Act’. Chapter 6, article 24 (b) and 25 particularly with regards to Article 18 of the Peaceful Assembly Law. See also San Yamin Aung (2014); “Charges Against Chin Women’s Activists Must Be Dropped: Campaigners”, The Irrawaddy, 8 July; Burma: Peaceful Protest Organizers Charged, Western Countries and Japan Should Challenge Government to Uphold Basic Freedoms. Human Rights Watch. 1 October, 2012.


32. It should be noted, however that while women serve in these positions among EAOs, there remains a lack of trained and qualified women serving in Myanmar’s military.

The NCA's lack of attention to the specific needs of women and girls further contradicts the UN Integrated DDR Standards (IDDRS), which provide guidance for good practice in this area. In addition, while CEDAW GR30's article 69 states, “… specifically target female combatants and women and girls associated with armed groups as beneficiaries and that barriers to their equitable participation are addressed,” the NCA makes no mention of the needs of these individuals or groups. Whilst the NCA itself does not officially rely on guidance from the UN, it would be significantly strengthened as a peacebuilding document by incorporating the language and policy frameworks of the IDDRS and CEDAW's GR 30.

**Point 7: Lack of gender perspectives in initiatives on health, education and livelihoods**

As evidence has shown, most if not all armed conflicts lead to the breakdown of public and service provision infrastructure. Such breakdowns result in a crisis of ensuing that essential services are delivered to the public in efficient and effective ways. In Myanmar, the disruption of public service provision is further exacerbated by the fact that the Government's annual fiscal spending on the military is greater than its combined budgets for health, education and social services. This has resulted in a situation in which women and girls are on the front lines of suffering, as they are forced to bear the brunt of socioeconomic disarray. Moreover, insecurity and violent conflict dislocates societal structures, forcing the roles and responsibilities of men and women to shift.

The NCA should explicitly respond to the demands of this shifting socio-cultural landscape. However, it largely fails to do so. While it suggests that the tasks to be implemented in the interim period include, “projects concerning the health, education and socio-economic development of civilians” (NCA Chapter 6 – provision 25 a (1)), it makes no stipulations for ensuring that these initiatives guarantee the participation of women. There is also no assurance that these activities will be undertaken with a view to ensure gender equality. While it is positive that the NCA has made mention of socio-economic issues, it falls short of discussing the methods and mechanisms through which they will be achieved.

The NCA should, for example, make note of key issues of concern effecting education in Myanmar. These include: the reintegration of war-affected girls into schools/universities; repair and

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reconstruction of school infrastructure; preventing the occurrence of attacks and threats against girls and their teachers; and ensuring that perpetrators of such acts of violence are promptly investigated, prosecuted and punished (GR 30 art. 48).

Economic recovery strategies that promote gender equality are another area that should be addressed by the NCA, as such strategies are a necessary pre-condition for a sustainable post-war economy. These strategies would need to target women working in both the formal and the informal sectors; leverage opportunities for women’s economic empowerment, in particular for rural women and other disadvantaged groups of women; ensure that women are involved in the design of those strategies and programmes and in their monitoring; and effectively address all barriers to women’s equitable participation in those programmes (GR 30 art. 49).

Additionally, the NCA should include mention of strategies needed to bolster healthcare in violence affected areas. Issues such as access to essential services such as health care, including sexual and reproductive health services are disrupted or underdeveloped, should be addressed, as women and girls affected by conflict are at a greater risk of unplanned pregnancy, sexual and reproductive injuries and contracting sexually transmitted infections.

The NCA suffers further from a dearth in attention to the mobility and freedom of movement if women and girls in Myanmar’s post-conflict context. Evidence shows reductions in such freedom of movement undermines women’s equal access to health care—a right guaranteed by CEDAW (article 12 (1). To respond to the diversity of needs of women and girls vis-à-vis health care services, peace agreements such as the NCA should support the systematic and comprehensive development of services in this area. It is equally important to leverage on pre-existing initiatives, such as those implemented by women’s organisations, to ensure services are tailored to local context and reflective of experience. The NCA, however, fails to include consideration of these types of strategies.

The NCA should also account for needs associated with the provision of essential health services. Such services should consider the multiple experiences and identities of women, as rural women, for example, are often disproportionately affected by the lack of adequate health and social services and inequitable access to land and natural resources. Similarly, women’s situations in insecure areas presents particular challenges to their employment and reintegration, as these are often negatively impacted by the breakdown of services resulting in food insecurity, inadequate shelter,

deprivation of property and lack of access to water. Widows, women with disabilities, older women, single women without family support and female-headed households are especially vulnerable to increased economic hardship. Thus, peacebuilding agreements such as the NCA should note the need to prioritize their economic survival in post conflict situations (GR 30 art 51).

SECTION 3. JMC TERMS OF REFERENCE (TOR) ANALYSIS FROM A GENDER PERSPECTIVE

The Joint Ceasefire monitoring Terms of Reference were approved at the Second JMC-U meeting held in Naypyidaw on November 17, 2015. The ToR is meant to be used as a guide for the composition, mandate and operations of the still nascent JMC at Union, State and Local levels. While the completion of this document and the policies it contains is clearly a major milestone in the peace process, the TOR falls short of meeting anything other than the most minimum standards of gender inclusion. The TOR barely makes mention of gender, and in only one instance uses gender-neutral language. This language can be found in Chapter 3’s discussion of the composition of JMC members at the Union, State and Local levels which uses the term “Chairpersons” to refer to the roles and responsibilities of Government actors sitting on the JMC. While this language is laudable, it is not replicated in any other sections of the ToR.

In addition, a number of flaws mark the TOR in regard to gender inclusion. These can be seen most notably in the absences of attention, recognition and language that acknowledges the experiences and needs of women in conflict and peacebuilding efforts. A number of points to this effect are outlined below, along with corresponding examples of what the JMC TOR would look like if it were amended to include adequate attention to gender. These examples are included in bold text.

The six points of concern and related examples identified in the JMC TOR include:

Point 1: Lack of attention to quotas on the JMC
Example 1- Chapter 3, JMC-U Composition; Chapter 4, JMC-S Composition; Chapter 5, JMC-L Composition

Point 2: Lack of reference to gender in provision of humanitarian support to IDPs and refugee returnees
Example 2- Chapter 3- Mandate of the JMC-U

Point 3: Lack of gender perspective in appointment of international observers and technical support staff
Example 3- Chapter 3, Mandate of the JMC-U

Point 4: Lack of specific reference to the inclusion of civilian protection monitoring (CPM)

Example 4- Chapter 4- Functions and Duties of the JMC-S

Point 5: Lack of gender perspective in discussion of verification teams

Example 5- Chapter 4, Mandate of the JMC-S; Chapter 6, Verification Teams, Composition

Point 6: Lack of gender perspective in discussion of dispute resolution

Example 6- Chapter 8, Dispute Resolution and Taking of Action

**Point 1. Lack of attention to quotas in composition of the JMC**

One essential element that is missing from the JMC TOR is inclusion of a minimum 30% gender quota. As AGIPP has discussed at length in its previous policy briefs, All signatories to the 1979 Convention on the Elimination of All Discrimination against Women (CEDAW) agree to institute temporary special measures, including quotas, to increase women’s participation in public life. The Government of Myanmar signed CEDAW in 1997 and thus has agreed to special temporary measures as a mechanism to increase the inclusion of women in public decision-making, which includes the peace process. The GoM has failed to implement quotas systematically. However, the JMC, as a new structure specifically designed to implement the peace process, has a rare and important opportunity to do so.

**Example 1: If gender perspectives were included**

Chapter 3
Union Level Joint Ceasefire Monitoring Committee (JMC-U)
Composition
4. JMC-U shall be formed by the Joint NCA Implementation Coordination Meeting (JICM) as follows:
   (a) JMC-U shall be formed with reputable representatives from the government, ethnic armed organizations and civil society who are acceptable to both sides. The JMC-U shall consist of a total of 26 members: 10 representatives from the government, 10 representatives from ethnic armed organizations and 3 representatives from civil society nominated by each side.
   **A minimum 30% quota of women will be included in this structure, at all levels (Union, State and Local) of the JMC.**

Chapter 4
State Level Joint Ceasefire Monitoring Committee (JMC-S)
Composition
34. JMC-U shall form JMC-S as follows:
   (e) Efforts shall be made as much as possible by both sides to include women among civil society representatives in the JMC-S.
Both sides shall guarantee the participation of a minimum 30% women civil society representatives on the JMC-S.

Chapter 5
Local Level Joint Ceasefire Monitoring Committee (JMC-L)
Composition
59. Local Level Joint Ceasefire Monitoring Committee (JMC-L) shall be formed as follows to support JMC-S.
(c) The composition of JMC-L may be changed to suit the local conditions subject to agreement by both sides and to approval of JMC-S. **However, the mandated minimum 30% quota of women’s participation shall remain in place on the JMC-L regardless of change in composition.**

Point 2. Lack of reference to gender in provision of humanitarian support to IDPs and refugee returnees

Another missing element in the JMC TOR is references to gender in discussions of provision of humanitarian assistance to support the needs of IDPs and refugee returnees in conflict and post conflict situations. As AGIPP’s second policy brief explains, in Myanmar, people in the most vulnerable situations suffering from the absence of educational, health and livelihood access are Internally Displaced Persons (IDPs). Having fled from violent conflict, IDP women (and children) are forced to abandon their studies prematurely, face a dire lack of health services, including reproductive health services, due to the absence of infrastructure and service provision in the camps, and suffer from an inability to support themselves and their families due to the absence of land and livelihood opportunities. The JMC TOR could speak to this issue by including language in its mandate that ensures provisions are made for women facing these precarious situations.

Example 2: If gender perspectives were included

Chapter 3
Mandate of the JMC-U

20. JMC-U shall coordinate and ensure the safety and human dignity in prioritizing the voluntary return of IDPs, particularly women IDPs, to their home areas and in establishing new settlements in appropriate areas. JMC-U shall recognize the different needs of women IDPs who choose to voluntarily return.

21. JMC-U shall jointly coordinate the screening and resettlement of IDPs and refugees who have returned. **Women’s specific needs and experiences will be considered in this process.**
Point 3. Lack of gender perspective in appointment of international observers and technical support staff

The JMC’s mandate makes mention of the need to include international observers and technical support staff as it becomes operationalized throughout the country at State, Local and Union levels. Details on the work of these international observers and resource persons, however, is lacking in the TOR. Specifically lacking is a gender perspective on the work of international observers. As AGIPP has argued in its first policy brief, the need exists to include Gender, Peace and Security Advisers at every level of the peace process architecture, as well as across all peace process bodies and mechanisms. The inclusion of international observers and technical resource persons at all levels of the JMC could provide a needed opportunity for gender advisers to offer their expertise as monitoring of the ceasefire continues.

Example 3: If gender perspectives were included

Chapter 3
Mandate of the JMC-U

27. The required number of international resource persons may be invited as observers and/or provide technical support after their qualifications have been determined through coordination between both sides. JMC-U may approve and arrange international experts to provide technical support and to work as observers upon request by the JMC-S and JMC-L as required. International observers and resource persons will include gender advisers who are tasked with providing technical support and guidance related to women’s and gender inclusion in the JMC structure and operations.


Point 4. Lack of specific reference to civilian protection monitoring (CPM)

In the civilian ceasefire monitoring (CCM) arena, a debate exists around whether there is a benefit to focusing on monitoring only technical breaches of the NCA and the various bi-lateral ceasefire agreements in place throughout the country, or whether monitoring efforts should be expanded to include civilian protection issues—i.e., a broader scope of human rights violations that are not necessarily explicitly discussed in the NCA and bi-lateral agreements. A civilian protection monitoring focus, it has been argued, would potentially better address the needs of women in conflict and post-conflict contexts, whose daily experiences of rights violations often go un-noticed and acknowledged in formal peace mechanisms and agreements. To remedy this, the JMC TOR could more explicitly discuss the inclusion of civilian protection monitoring issues within its mandate, thereby ensuring that women’s needs and experiences of armed conflict do not go un-noticed and un-addressed.

Example 4: If gender perspectives were included

Chapter 4
State Level Joint Ceasefire Monitoring Committee (JMC-S)

Functions and Duties of JMC-S
35. JMC-S is responsible to jointly monitor at the Region/ State level the status of the nationwide ceasefire specified in the NCA, military matters, and adherence to military codes of conduct and terms of the ceasefire, to investigate the disputes and jointly coordinate for the resolution or for implementation of measures. Civilian protection monitoring (CPM) issues will be included in these functions, particularly issues relevant to the experiences of women and girls who have been affected by conflict.

Point 5. Lack of gender perspective in discussion of verification teams

The mandate section of the JMC TOR includes a discussion of verification teams; their implementation work as well as their make-up. The specific activities and foci of these teams, however, lacks a gender perspective and attention to addressing the needs of women in conflict and post-conflict environments. Training verification teams to take women’s experiences and needs into account is an essential task of ceasefire monitoring, as this training will help monitors more accurately identify, and then verify, breaches of the NCA and bilateral ceasefires when they have taken place. The JMC’s TOR should be amended to include language specifying the importance of this training, and a commitment to ensuring that that such training will take place.

Example 5: If gender perspectives were included

Chapter 4
State Level Joint Ceasefire Monitoring Committee (JMC-S)

Mandate of JMC-S
46. Region/ State level Verification Teams shall be formed as required under each JMC-S based on focal points of the Government and the Ethnic Armed Organizations who are members of JMC-S, deployed to relevant areas for implementation work with appropriate ToRs. The verification teams shall be charged with implementation work as the initial JMC mechanism. Verification teams will be trained to take into account the specific needs and experiences of women in conflict affected areas, and be trained on international standards relevant to GBV.

Chapter 6
Verification Teams
Composition

77. Verification Teams shall be formed by the respective JMCs at various levels as follows:
(b) Civil society representatives who will be members of the Verification Teams of JMC-U and JMC-S shall be members of respective JMCs while one each of the government and EAO representatives shall be members of respective JMCs. Civil society representatives who will be members of the Verification Teams of JMC-L may be either members of non-members of JMCs. **Women’s CSOs shall comprise a minimum 30% of the civil society representatives included on the verification teams.**

Point 6. Lack of gender perspective in discussion of dispute resolution

Dispute resolution is a key and ever-contested issue within Myanmar’s conflict environment. One of the reasons for this has to do with the weak legal framework that guides Myanmar’s conflict environment, and the lack of appropriate mechanisms by which to hold perpetrators of sexual and gender-based violence to account. While CEDAW and the UNSCRs mandate the implementation of such frameworks and mechanisms, and insists that member states adopt them as a way of bolstering women’s security, Myanmar’s failure to adhere to these requirements has prolonged insecurity in conflict and post-conflict environments throughout the country.

The JMC, as the primary mechanism for handling disputes in post-conflict situations, should ensure that women’s needs and experiences are taken into account when working as a mediator to settle disputes. As a way of doing this, the JMC should explicitly rely on (and the language its TOR should explicitly point to) the nascent but crucial legal frameworks being developed to address and ultimately remedy the sexual and gender-based violence that pervades the country. These include Prevention and Protection of Violence Against Women (POVAV) bill, and policies being developed...
under the National Strategic Plan for the Advancement of Women (NSPAW). The JMC TOR should acknowledge these national level frameworks and mechanisms, and include a commitment to their implementation in the mandate of ceasefire monitors at State, Union and Local levels.

Example 6: If gender perspectives were included

Chapter 8
Dispute Resolution and Taking of Action

(c) For extremely serious violations, the JMC-U shall investigate and verify the offence, and send its findings to the organization concerned to enable it to take action in accordance with its own procedures and regulations, and in compliance with national laws and policies adhering to international human rights standards, such as CEDAW and UNSCR 1325.

81. The organization concerned shall send its report on actions taken to the respective JMC. If the complaint has been lodged by third parties, a response indicating the action taken shall be sent by the respective JMC to the third parties that lodged the complaint. The respective JMC has the responsibility to explain the action taken to the victim of the violation or to the party that lodged the complaint. The taking of action shall include holding armed actors accountable for the committing of sexual violence and/ or other forms of GBV as defined in Myanmar’s PoVAW Law.

82. The action taken by the JMCs at various levels shall not infringe on the legally guaranteed citizen rights, and will take place in accordance with policies adopted under the National Strategic Plan for the Advancement of Women (NSPAW).

CONCLUSION

Years of deliberation and negotiation, almost exclusively by men, have inevitably led to a ceasefire agreement wherein women’s needs and experiences remain almost wholly absent, and the broader perspectives of civilians marginalised. In addition, women’s experiences of violence and access to justice remain obscured from this process, while their roles as ex-combatants and those supporting fighting forces continue to go unacknowledged and overlooked in security processes.

The NCA and JMC frameworks are crucial instruments for reversing these trends. Without incorporating adequate language and attention to the specific needs of women in Myanmar’s peace process, however, they will fall short of achieving their goals. As we look ahead to the future, it is essential that these instruments and the structures and processes they support become considerably more inclusive of women’s voices, experiences and concerns. Doing so will ensure that Myanmar does not miss yet another opportunity to increase women’s participation and secure gendered outcomes to support the country in achieving sustainable peace.
ABOUT AGIPP

AGIPP was formed to address two persistent challenges:

1. The low levels of women’s involvement in peace and security-related negotiations and agreements to date in Myanmar.
2. The critical necessity to improve the inclusion of gendered analysis and outcomes in ceasefire and wider peace agreement texts and implementation.

AGIPP includes associated civil society organisations/networks from across Myanmar and welcomes collaboration with national women’s rights organisations/networks and peace organisations/networks that substantively address gender in their work. The work of these organisations/networks spans from community level mobilisation to advocacy and policy engagement. Collectively, AGIPP amplifies the voices of its partners and provides an arena for civil society concerns to be brought into the unfolding peace process.

AGIPP is guided by a Steering Committee comprised of seven organisations: Gender and Development Institute (GDI), Gender Equality Network (GEN), Kachin State Women’s Network (KSWN), Mon Women’s Network (MWN), Nyein (Shalom) Foundation, Women and Peace Action Network (Shan State) (WPAN), and Women’s Organisation Network (WON). A small Secretariat operates in Yangon.

For more information about the Alliance visit:
Website: www.agipp.org (English) www.agipp.org.mm (Myanmar)
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