



Global Justice Center

Human Rights Through Rule of Law

Global Justice Center Submission

to

Special Rapporteur on the situation of human rights in Myanmar

Call for submissions: The gendered impacts of the coup and conflict in Myanmar

January 5, 2024

Contact information

Merrite Johnson
Research & Program Manager
Global Justice Center
11 Hanover Square, 6th Floor
New York, NY 10005
+1 212 725 6530
mjohnson@globaljusticecenter.net

The Global Justice Center (GJC) is an international human rights organization, with consultative status to the United Nations, dedicated to advancing gender equality through the rule of law. We combine advocacy with legal analysis, working to ensure equal protection of the law for women and girls.

For more information, please visit our website: www.globaljusticecenter.net

The following responds specifically to question 1 regarding discrimination on the basis of gender and sexuality through laws, policies, directives, and requirements that target the rights of women and people with diverse gender identities, including members of Myanmar’s LGBTQ community.

Gender-discriminatory laws and policies, and impunity for sexual and gender-based crimes, have long been the norm in Myanmar. Since independence in 1948, successive military regimes have perpetuated systemic discrimination based on gender, sexual orientation, and gender identity. The 2021 military coup greatly exacerbated gender-based discrimination and violence against women and people with diverse gender identities, and put an immediate end to any attempts to reform or eliminate these structural barriers to equality.

The 2008 Constitution

At the heart of Myanmar’s discriminatory laws and policies is the military-drafted 2008 Constitution. The same document that laid the groundwork for the February 2021 coup through its broad emergency powers provision¹ has also enabled a culture of complete impunity for military-perpetrated crimes, including sexual and gender-based violence. Though the Committee Representing Pyidaungsu Hluttaw (CRPH) voted shortly after the coup to abolish the 2008 Constitution,² it remains the law of the land in the parts of the country under junta control, and the junta regularly cites the Constitution’s authority.

Even before the coup, the military faced no civilian oversight or accountability. The Constitution grants the military “the right to independently administer and adjudicate all affairs of the armed forces,”³ leaving it to hold itself accountable. This has created a culture of complete impunity for serious human rights violations, with a very small number of exceptions aimed at appeasing the international community.⁴

Furthermore, the Constitution grants amnesty for any crimes committed by the military under current or previous administrations, stating that no “proceeding” can be initiated against a member

¹ Constitution Art. 40, https://www.constituteproject.org/constitution/Myanmar_2008. For more detail on the structural barriers to accountability in Myanmar, see Global Justice Center, *Structural Barriers to Accountability for Human Rights Abuses in Burma* (Oct. 2018), <https://wordpress-537312-2488108.cloudwaysapps.com/temp-uploads/2018/10/Structural-Barriers-Burma.pdf>

² *Myanmar’s Shadow Government Vows a New Constitution and an End to Dictatorship*, THE IRRAWADDY (Apr. 1, 2021), <https://www.irrawaddy.com/news/burma/myanmars-shadow-government-vows-new-constitution-end-dictatorship.html>

³ Const. Art. 20(b)

⁴ In 2018, seven soldiers were sentenced to 10 years in prison for killing 10 Rohingya men in Inn Din, but they were released from prison after less than a year. *Rohingya massacre: Myanmar grants soldiers early release*, BBC NEWS (May 27, 2019) <https://www.bbc.com/news/world-asia-48419595>; International experts understood the 2020 conviction of two officers and a soldier related to the military’s massacre of Rohingya civilians in Gu Dar Pyin to be “farcical” and an attempt to “an apparent attempt to influence the United Nations and international tribunals.” Human Rights Watch, *Myanmar: Court Martial Latest Accountability Sham* (July 3, 2020), <https://www.hrw.org/news/2020/07/03/myanmar-court-martial-latest-accountability-sham>.

of the military “in respect of any act done in the execution of their respective duties.”⁵ The Constitution also exempts the Commander-in-Chief from all legal constraints, stating that his decision in the adjudication of military justice “is final and conclusive.”⁶ This provision has allowed the Commander-in-Chief, Min Aung Hlaing, to issue pardons to members of the military without oversight.

Outdated & discriminatory laws

Myanmar’s Penal Code dates to 1861, and its laws concerning gender are significantly outdated and out of line with established international human rights standards, nor do they provide adequate protection or redress for harms. Before the coup, efforts were underway to reform colonial-era laws on sexual and gender-based violence through the Prevention of Violence Against Women Law (PoVAW Law). Though the draft law also fell short of international standards, its passage would have been an important first step in reforming the country’s criminal legal system to provide protections from gender-based violence.⁷ The coup put an immediate halt to the PoVAW Law and any other attempts to reform Myanmar’s laws.

Post-coup changes to the legal system have further eroded civil rights protections, with the intention of further criminalizing the Civil Disobedience Movement (CDM). Less than two weeks after the coup, the State Administration Council (SAC) suspended portions of the Law Protecting the Privacy and Security of Citizens, thus removing protections from abuses during searches, arrests, and detention.⁸ At the same time, the SAC amended the Penal Code to criminalize anti-coup speech and expand the scope of the Penal Code section on high treason to include criticism of the military.⁹

Though these legal changes are nominally gender-neutral, both the erosion of civil rights protections and the creation of new laws designed to criminalize the CDM have outsize effects on women and

⁵ Art. 445 reads: “All policy guidelines, laws, rules, regulations, notifications and declarations of the State Law and Order Restoration Council and the State Peace and Development Council or actions, rights and responsibilities of the State Law and Order Restoration Council and the State Peace and Development Council shall devolve on the Republic of the Union of Myanmar. 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.” The State Law and Order Restoration Council and the State Peace and Development Council were the official names of the military governments from 1988-1997 and 1997-2011, respectively.

⁶ Const. Art. 343 (b)

⁷ For more detail on the shortcomings of the proposed PoVAW Law, see Global Justice Center, *Myanmar’s Proposed Prevention of Violence Against Women Law: A Failure to Meet International Human Rights Standards* (Jul. 2020), https://wordpress-537312-2488108.cloudwaysapps.com/temp-uploads/2020/07/20200710_MyanmarPOVAWLawAnalysis.pdf. Unofficial translation of the proposed law on file with author.

⁸ <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights>, https://www.myanmar-responsiblebusiness.org/pdf/Law-Protecting-Privacy-and-Security-of-Citizens_en_unofficial.pdf

⁹ GLOBAL NEW LIGHT OF MYANMAR, February 15, 2021, <https://icnl.org/wp-content/uploads/penalcode.pdf>.

gender minorities, who have been at the forefront of resistance to the coup.¹⁰ Over 5,200 women have been arrested since the coup,¹¹ and women and LGBTQ people in detention are particularly vulnerable to torture that includes sexual violence and assault.¹²

Laws on SGBV

The country's laws concerning sexual and gender-based violence are deeply regressive and reinforce existing misogyny and social discrimination.

Though international standards establish that SGBV can be committed by a person of any gender against a person (or persons) of any gender, Section 375 holds that rape can only be committed by a man against a woman.¹³ Further out of line with international human rights standards, marital rape is not a crime in Myanmar,¹⁴ thus depriving women of much-needed protections from intimate partner violence.

In addition, abortion is illegal in Myanmar except when necessary to save the pregnant person's life,¹⁵ thus undermining the human rights of women, girls, and all people who can become pregnant.¹⁶ Myanmar is a signatory to a number of international human rights treaties,¹⁷ which protect access to abortion under the rights to: life; health; privacy; liberty and security of person; to be free from torture and other cruel, inhuman, or degrading treatment or punishment; freedom of thought, conscience, and religion or belief; equality and non-discrimination; and to seek, receive, and impart information.¹⁸

¹⁰ Women comprise an estimated 60% of anti-junta protestors. Umayma Khan, *The women of Myanmar: "Our place is in the revolution,"* AL JAZEERA (Apr. 5, 2021), <https://www.aljazeera.com/features/2021/4/25/women-of-myanmar-stand-resilient-against-the-military-coup>

¹¹ Data as of Jan. 5, 2024 from Assistance Association for Political Prisoners. <https://airtable.com/appHDJLEiPsMGFJ7s/shr9w3z7dyIoqdUv4/tbl8hVtSci8VifbO9>

¹² OHCHR, *Situation of human rights in Myanmar since 1 February 2022*, ¶36, U.N. Doc. A/HRC/52/51, (Mar. 2, 2023). *See also 15 Days Felt Like 15 Years: Torture in Detention Since the Military Coup*, Amnesty International (Aug. 2, 2022), <https://www.amnesty.org/en/documents/asa16/5884/2022/en/>

¹³ Penal Code Section 375. <https://www.legal-tools.org/doc/1a6e18/pdf/>

¹⁴ Penal Code Section 375: "Exception: Sexual intercourse by a man with his own wife, his wife not being under thirteen years of age, is not rape."

¹⁵ Penal Code Section 312.

¹⁶ Although most people who can become pregnant and require abortion services are cisgender women, people with diverse gender identities may also need abortions and are profoundly affected by abortion restrictions.

¹⁷ Myanmar is a State party to: the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities. <https://indicators.ohchr.org/>

¹⁸ As recently summarized by the Working Group on discrimination against women and girls: "sexual and reproductive health rights are clearly established under international law. They are an integral part of a number of civil and political rights that underpin the physical and mental integrity of individuals and their autonomy, such as the rights to life, liberty and security of person, freedom from torture and other cruel, inhuman or degrading treatment, privacy and respect for family life, as well as economic, social and cultural rights, such as the rights to health, education and work and the right to enjoy the benefits of scientific progress, and the cross-cutting rights of non-discrimination and equality." Working

Anti-LGBTQ laws

Just as social norms of patriarchy and misogyny are codified as legal discrimination against women and girls, hostility to LGBTQ people is also entrenched in Myanmar's laws. This legal discrimination has in turn made LGBTQ people easy targets for violence and intimidation by the military and its affiliated groups.¹⁹

Notably, the 2008 Constitution excludes LGBTQ citizens from anti-discrimination protections: Article 348 prohibits discrimination against any citizen based on “race, birth, religion, official position, status, culture, sex and wealth” but does not include sexual orientation or gender identity as a protected category. The country's Penal Code Section 377, a carryover from the British colonial era, criminalizes same-sex relations (to which it refers as “unnatural offences”) with imprisonment of up to 10 years.²⁰ Though convictions under Section 377 are rare, security forces use the existence of the law itself as a pretext to intimidate, arrest, and detain LGBTQ individuals and civil society.²¹

Other colonial-era laws enable police to arbitrarily target LGBTQ people in Myanmar, including Section 35 of the 1945 Police Act and Section 30 of the Rangoon Police Act 1899 - the so-called “Shadow Laws.”²² LGBTQ civil society in the country have documented how Myanmar police routinely intimidate and arrest them for routine behavior (for which cisgender, heterosexual people are not criminalized) like traveling to and from work, being outdoors at night, or simply sitting outside their own homes.²³ Together with the above-mentioned post-coup legal changes, the continued existence of the “Shadow Laws” places LGBTQ people in particular danger of harassment, arrest, and detention by security forces.

Conclusion

The 2021 coup and ensuing armed conflicts have had an outsize impact on women, girls, and gender minorities in Myanmar. Misogyny, homophobia, and transphobia - already deeply entrenched in the country's legal system - have made women, girls, and LGBTQ people easy targets for violence.

Group on discrimination against women and girls, Women's and girls' sexual and reproductive health rights in crisis (U.N. Doc. A/HRC/47/38) (28 Apr. 2021), ¶ 18.

¹⁹ Junta-affiliated Pyusawhtee militias are also known to perpetrate violence against LGBTQ people. See Myanmar LGBTQIAs Human Rights Watch Forum, *Rainbow Amid The Storm: Exposing the Harsh Realities of LGBTQIAs in Post-Coup Myanmar* (May 2023), at 37, 59, 62, https://progressivevoicemyanmar.org/wp-content/uploads/2023/08/MLHRWF_RATSReport_FINAL_ENG-.pdf

²⁰ Penal Code section 377.

²¹ Nexus Response Mechanism, *Rainbow Resilience: LGBTQI+ lives and civil society in Myanmar's coup* (Sept. 2022), at 5-7.

²² *Rainbow Resilience* at 5-7; *Rainbow Amid the Storm* at 17; Colors Rainbow, *In the Shadows: Systemic injustice based on sexual orientation and gender identity/ expression in Myanmar* (Nov. 2019) at 29-33, <https://www.colorsrainbow.org/wp-content/uploads/2020/07/In-the-Shadows-%E2%80%93-Systemic-injustice-based-on-sexual-orientation-and-gender-identity-expression-in-Myanmar.pdf>

²³ Colors Rainbow at 31.

Any response to the crisis must consider these intersections and adopt an inclusive, holistic, and gender-competent approach.