



# BETWEEN FEAR AND HOPE

CHALLENGES AND OPPORTUNITIES FOR  
STRENGTHENING RULE OF LAW &  
ACCESS TO JUSTICE IN MYANMAR

September 2014



## BETWEEN FEAR AND HOPE:

*CHALLENGES AND OPPORTUNITIES FOR STRENGTHENING  
RULE OF LAW & ACCESS TO JUSTICE IN MYANMAR*

September 2014



## EXECUTIVE SUMMARY

Between March and April 2014, a perceptions-based mapping exercise was carried out in selected areas of Yangon Region and Mon State, aimed at identifying challenges and opportunities for strengthening rule of law and access to justice in these two States/Regions. The research was qualitative in nature, and relied on a purposive selection of respondents. As such, the findings are not statistically representative, but are indicative of the range of perspectives and experiences of local actors regarding justice and the national reform process. It is hoped that the findings contained in this report will contribute to efforts directed at strengthening the rule of law and access to justice as ingredients of Myanmar's still fragile transition.

To date, Myanmar is still at the very early stages of its national reform process led by the government of President U Thein Sein. The reform efforts include the introduction of multi-party political processes; fiscal, administrative and political decentralization; economic liberalization; public sector governance and anti-corruption initiatives; as well as private sector development. These changes are envisaged as realizing "the final step of the seven-step Road Map"<sup>i</sup> to a disciplined multi-party democratic system.

From a democratic governance perspective, these reform initiatives have resulted in significant institutional changes over the past three and a half years. They include the release of political prisoners; conduct of the April 2012 by-elections; initiation of national ceasefire negotiations; formal abolishment of the state-run censorship board; conduct of local-level elections for Ward and Village Tract Administrators; passage of anti-corruption legislation; and appointment of an anti-corruption commission, among others. In parallel with these positive changes, however, there have also been troubling developments. Communal tensions have led at times to significant destruction of property, displacement of communities and loss of lives.<sup>ii</sup> Civil society actors face intimidation and harassment when attempting to organize and act in response to various reforms,<sup>iii</sup> and journalists intimidated, arrested and prosecuted for reporting news and opinions.<sup>iv</sup> These threats to personal security, freedom of assembly and expression continue to be reported.

To an extent, the tensions highlighted above and in this report reflect the evolving shifts in State-society relations that are anticipated by the institutional changes, recalibrating Myanmar society from an authoritarian, command and control orientation towards one of greater openness, transparency and civic participation in public life.

Equality is a key juridical and moral norm that emerges consistently in discussions regarding these sensitive structural and cultural fault lines of change. Equality is enshrined in the 2008 Constitution,<sup>v</sup> and it is a touchstone of any rule of law state, without which democracy has little substantive meaning for average people. Among other values, 'equality' arguably features most prominently in the Myanmar context, both as a substantive ideal given the country's demographic diversity, and as a principle – equality before and under the law – guiding the reforms so that all may benefit from the process.

In the context of these profound changes being introduced at the national level, the mapping research honed in on the values of justice and equality – key dimensions of the reform process from the perspective of local communities. The exercise was framed around three general



questions: What are the local priority justice concerns? How do people address these concerns? What are the perceived obstacles to accessing justice?

In articulating their responses, research participants broadly described five themes that generally formed the backdrop to their narratives: continuities with previous military governments; the legacy of armed conflict; pervasive corruption; attitudes towards vulnerable and minority groups; and the influence of personalities, connections and networks (Chapter II). These themes shape the environments in which justice concerns arise and influence the ways in which individuals and communities seek help in response to such concerns. Cutting across these motifs is a common sense of fear and distrust that is tinged with hope that the reform process will continue and will result in significant, equitable change.

Following a sketch of Myanmar's institutional context, Chapter III goes on to describe in some detail four priority justice concerns expressed by local residents across the eight townships that the research team visited, namely, issues related to: land (broadly encompassing all housing, land and property concerns); discrimination; legal protection of women and children; and public insecurity. Overall, these expressed concerns reflect aspirations of individuals and communities towards equal protection and enjoyment of the law, and towards fair and equitable treatment.

The findings reported in Chapter III also draw attention to the roles of certain public officials. Justice concerns in relation to land and discrimination highlight the role that officials from the General Administration Department, Settlement and Land Records Department, and Immigration Department have in making quasi-judicial decisions. Such administrative decision-making authority is not subject to any independent review despite the fact that, by any reasonable standard, affected citizens should be able to expect impartiality. With respect to issues of public insecurity and legal protection of women and children, the police, in addition to being feared and distrusted, are increasingly being perceived as weak, ineffective, indifferent and incapable of protecting those who most require its services.

The findings in chapters II and III underscore the perception that State institutions are only weakly democratic and accountable to the law, and that, as a result, vulnerable and minority groups bear additional burdens of weak and unaccountable governance in the form of perceived inequality and unfairness.

The report then goes on in Chapter IV to explore four evolving patterns of authority and justice-seeking behaviour by local residents from across the research sites. These patterns are differentiated in relation to the role of key actors: State institutions and public officials; emerging civic, social and political leadership, including Members of Parliament and other political party actors; religious authorities; as well as self-reliance on the part of local residents. The findings in this chapter also capture some positive indications of change as a result of national-level reform efforts, including new patterns of justice-seeking behaviour, as well as the emerging role of civil and political organizations, both of which may reflect nascent democratization at the community level.

The final chapter of the report (Chapter V) offers some reflections on the overall findings of the mapping research, and concludes with recommendations. The suggestions that are put forward anticipate a broadening of the political settlement beyond elite groups to vulnerable and marginalized populations who have equal claims to improving their wellbeing. The reform and development process is, as such, extremely conflict sensitive, depending on how these fault lines are understood and managed. Significant progress will likely only be observed over decades and generations through persistent efforts that take full account of local contexts.

There is no blueprint for the required change, nor should expectations be raised that this is available. The recommendations instead propose a set of information-based strategies,<sup>vi</sup> and take note of capacities required for these strategies. In particular, the recommendations suggest attention to intermediate institutional arrangements that may emerge and that merit support and further transformation as the political transition unfolds.

---

<sup>i</sup> See: President U Thein Sein's speech to members of the Union Government and heads of Union-level organizations, 31 March 2011, at <http://www.president-office.gov.mm/en/?q=briefing-room/news/2011/04/01/id-1802> (accessed 29 July 2014); President U Thein Sein's address on the occasion of the 64<sup>th</sup> Independence Day, 4 January 2012, at <http://www.president-office.gov.mm/en/?q=briefing-room/news/2012/01/04/id-464> (accessed 30 July 2014); and President U Thein Sein's interview with Ms. Elizabeth Graham Weymouth of The Washington Post, 20 January 2012, at <http://www.president-office.gov.mm/en/?q=briefing-room/news/2012/01/20/id-479> (accessed 30 July 2014).

<sup>ii</sup> See: International Crisis Group, *The Dark Side of Transition: Violence Against Muslims in Myanmar* (1 October 2013). The most recent episode of violence occurred in July 2014 in Mandalay City, which resulted in two deaths.

<sup>iii</sup> In addition to civil society actors campaigning on land related issues, the most recent and high profile harassments were of civil society representatives who publicly opposed an interfaith marriage bill.

<sup>iv</sup> See: David Scott Mathieson, *Dispatches: Burma Backsliding on Media Freedom*, 30 June 2014, at <http://www.hrw.org/news/2014/06/30/dispatches-burma-backsliding-media-freedom> (accessed 30 July 2013). The most recent incident involved four reporters of Unity journal and its Chief Executive Officer all of whom were charged under the *Official Secrets Act* and sentenced to 10 years' imprisonment with hard labour for reporting allegations that a military facility was being used to manufacture chemical weapons in July 2014.

For an analysis of the Media Law that was passed by Parliament in March 2014, see: Article 19, *Myanmar: News Media Law* (2014).

<sup>v</sup> Constitution of the Union of Myanmar (2008), Art. 6(e), 21(a) and 348.

<sup>vi</sup> These strategies are taken and adapted from those identified by Adler, Sage and Woolcock, *Interim Institutions and the Development Process: Opening Spaces for Reform in Cambodia and Indonesia* (March 2009) [Brooks World Poverty Institute Working Paper 86](#)







# Table of Contents

<b>EXECUTIVE SUMMARY</b>	<i>i</i>
<b>GLOSSARY</b>	
<b><u>I. INTRODUCTION AND METHODOLOGY</u></b>	<b>1</b>
A. RESEARCH QUESTIONS	1
B. RESEARCH ETHICS AND APPROACH	2
C. RESEARCH TEAM	2
D. GEOGRAPHIC COVERAGE AND FIELDWORK	3
<b><u>II. FINDINGS: INSTITUTIONAL CONTEXT FOR RULE OF LAW IN MYANMAR</u></b>	<b>4</b>
A. CONTINUITIES WITH THE PAST	4
(i) <i>Impact on Reform Process</i>	4
(ii) <i>Fear and Distrust</i>	6
B. ECHOES OF ARMED CONFLICT	8
(i) <i>Perspectives on Ethnic Conflict</i>	8
(ii) <i>Ceasefire Economy</i>	9
C. CORRUPTION	11
(i) <i>Basic Salary Gap</i>	11
(ii) <i>Entrenched Practices</i>	12
D. ATTITUDES TOWARDS VULNERABLE AND MINORITY GROUPS	14
(i) <i>Women</i>	15
(ii) <i>Children</i>	16
(iii) <i>The Disabled</i>	16
(iv) <i>Religious Minorities</i>	17
(v) <i>Migrants</i>	18
E. PERSONALITIES, CONNECTIONS AND NETWORKS	19
F. SUMMARIZING COMMENTARY	20
<b><u>III. FINDINGS: JUSTICE CONCERNS</u></b>	<b>22</b>
A. LAND	22
(i) <i>Land Grabs</i>	23
(ii) <i>Private Land Disputes</i>	26
(iii) <i>(Re)classification and Sale of Land</i>	28
(iv) <i>Slums and Squatters</i>	29
(v) <i>Competing Use of Public Spaces</i>	30
(vi) <i>Land Issues Involving Non-State Armed Groups</i>	30
B. DISCRIMINATION	31
(i) <i>Civil Documentation</i>	32
(ii) <i>Livelihood, Educational and Professional Opportunities</i>	36
(iii) <i>Freedom of Movement</i>	36

C. LEGAL PROTECTION OF WOMEN AND CHILDREN	37
(i) <i>Sexual Violence</i>	38
(ii) <i>Domestic Violence</i>	41
(iii) <i>Human Trafficking</i>	43
(iv) <i>Sex Work</i>	45
(v) <i>Children and the Law</i>	46
D. PUBLIC INSECURITY	48
(i) <i>Unlawful and Criminal Activities by Non-State Armed Groups</i>	50
(ii) <i>Narcotics</i>	51
E. SUMMARIZING COMMENTARY	51
<b>IV. FINDINGS: JUSTICE-SEEKING BEHAVIOUR</b>	<b>53</b>
A. PATTERNS OF AUTHORITY AND JUSTICE-SEEKING BEHAVIOUR	53
(i) <i>Pattern One: Justice-Seeking through the State</i>	54
(ii) <i>Pattern Two: Emerging Civic, Social and Political Leadership</i>	55
(iii) <i>Pattern Three: Justice-Seeking through Religious Authority</i>	57
(iv) <i>Pattern Four: Self-Reliance</i>	58
B. THE ROLE OF MPs AND POLITICAL PARTIES	58
(i) <i>Connecting and Bridging</i>	58
(ii) <i>Institutional Roles of Parliamentarians and Political Parties</i>	61
C. SUMMARIZING COMMENTARY	63
<b>V. REFLECTIONS AND RECOMMENDATIONS</b>	<b>64</b>
A. REFLECTIONS	64
(i) <i>Conceptions of Power and Authority</i>	64
(ii) <i>Societal Relationships</i>	67
B. RECOMMENDATIONS	69
ANNEX 1: METHODOLOGICAL COMPARISON WITH UNDP MAPPING	72





## **GLOSSARY**

Amyotha Hluttaw	House of Nationalities (Upper House of the Pyidaungsu Hluttaw)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CSG	Community Support Group
DG	Director-General
DKBA	Democratic Karen Benevolent Army (formerly Democratic Karen Buddhist Army)
GAD	General Administration Department (under the Ministry of Home Affairs)
MP	Member of Parliament
MWAF	Myanmar Women's Affairs Federation
NLD	National League for Democracy
NMSP	New Mon State Party
NSAG	Non-State Armed Group
NUP	National Unity Party
Pyithu Hluttaw	House of Representatives (Lower House of the Pyidaungsu Hluttaw)
Pyidaungsu Hluttaw	Assembly of the Union, comprising both Pyithu Hluttaw and Amyotha Hluttaw
SLORC	State Law and Order Restoration Council
SLRD	Settlement and Land Records Department (of the Ministry of Agriculture and Irrigation)
SPDC	State Peace and Development Council
USDA	Union Solidarity and Development Association
USDP	Union Solidarity and Development Party





## **I. INTRODUCTION AND METHODOLOGY**

Between March and April 2014, the Myanmar Legal Aid Network (MLAW) carried out a perceptions-based mapping exercise in selected areas of Yangon Region and Mon State where two of its network members are operating Justice Centres that provide free legal assistance and advice to local communities. The exercise was aimed at identifying challenges and opportunities for strengthening the rule of law and access to justice in those two States/Regions during this initial stage of Myanmar's national reform process. It is hoped that the findings contained in this report will contribute to a larger pool of knowledge and understanding of rule of law issues in Myanmar.<sup>1</sup>

A key feature of this mapping exercise was the purposive selection of research participants and the qualitative nature of the study, which focused principally on the perceptions and experiences of the respondents. The findings are not statistically representative, but do provide important indications for rule of law and access to justice challenges and opportunities.<sup>2</sup>

### **A. RESEARCH QUESTIONS**

The mapping research sought answers to three general questions:

1. What are the local priority justice concerns?
2. How do people address these concerns?
3. What are the perceived obstacles to accessing justice?

Follow-up questions with communities at the ward and village level inquired about the impact of economic status, political affiliation, cultural identity, gender, armed conflict, and any other factor, on the nature of justice concern(s) experienced, on the availability and accessibility of pathways to justice, and on the nature of obstacles encountered.

Discussions with civil society actors, religious leaders, political party representatives and Members of Parliament (MPs) at township and State/Region levels also centred around similar overarching questions, focusing in particular on their respective institutional leadership roles:

1. What are the local priority justice concerns from the perspective of the organization/institution?

---

<sup>1</sup> Other recent reports focusing on rule of law issues in Myanmar include: International Bar Association, *The Rule of Law in Myanmar: Challenges and Prospects* (December 2012); DLA Piper, *et al.*, *Myanmar Rule of Law Assessment* (March 2013); United States Institute of Peace, *USIP Burma/Myanmar Rule of Law Trip Report* (June 2013).

One particular ongoing effort is the research on plural legal systems relating to women in Myanmar, as part of a larger regional study by UNWomen.

<sup>2</sup> This mapping exercise broadly adopted the same research method and approach – with adaptations where necessary and appropriate – as a similar initiative undertaken by the United Nations Development Programme (UNDP) in 2013, which covered selected areas of Mandalay Region, Shan State and Ayeyarwady Region.

A methodological comparison between this research and the UNDP exercise is provided in Annex 1.

2. How do people address these concerns?
3. What is the role of the organization/institution in addressing these concerns?

Follow-up questions with these actors sought to explore trends over the past several years, local patterns and understandings related to the rule of law, and broader institutional responses to justice concerns.

## **B. RESEARCH ETHICS AND APPROACH**

Fundamental to every interaction was prioritisation of the safety of both research participant(s) and researchers, given local sensitivities to questions relating to ‘rule of law’ and ‘justice’. Local sensitivities were heightened by the fact that a portion of fieldwork overlapped with the first national census to be carried out in Myanmar in over three decades.<sup>3</sup> The priority for every initial interaction was to build and maintain trust, not only with research participants, but also with the broader host community. Information shared by the respondents was ensured confidentiality, and participants were free to withdraw from discussions or interviews at any time. All researchers had explicit instructions to avoid any question or topic that would undermine trust or place any participant at risk.

Adherence to these ethical guidelines and to the ‘do no harm’ principle led to continuous adaptations of the research approach. In areas where the researchers felt confident and comfortable, the mapping proceeded along agreed lines, directly seeking communities’ views and perspectives on local justice concerns. A more generalist approach that focused on broader socio-economic development themes was adopted in contexts where the researchers felt less confident; and in areas that were less open and less welcoming, a market survey approach was utilised. Such adaptations did not affect the quality of the findings, for the main approach required the researchers to have a clear understanding of the research framework and related categories of inquiry, rather than going through lists of questions. This enabled the researchers to respond flexibly to local contexts.

## **C. RESEARCH TEAM**

Fieldwork was carried out by a 13-member research team from Enlightened Myanmar Research (EMR),<sup>4</sup> and led by an international consultant.<sup>5</sup>

In late February, the EMR research team participated in a week-long training, during which they were introduced to key rule of law and access to justice concepts, including specific guidance on issues related to gender, children and land conflict. Following the training, the research team spent another week pre-testing the research tool.

---

<sup>3</sup> The nation-wide Population and Housing Census was conducted between 29 March and 10 April 2014. In the weeks leading up to the census period, conflict over who would be counted as Myanmar citizens erupted in Rakhine State.

<sup>4</sup> Formerly known as Myanmar Development Research (MDR).

<sup>5</sup> The consultant also co-led the UNDP Rule of Law and Access to Justice Mapping in 2013.

## D. GEOGRAPHIC COVERAGE AND FIELDWORK

The mapping fieldwork was conducted in Yangon Region and Mon State, areas in which two MLAW members are operating Justice Centres that provide free legal assistance and advice to local communities. The selection of townships, wards and villages for fieldwork was guided by the following criteria:

1. To include areas that will increase understanding of the context in which the Justice Centres currently operate;
2. To include areas that will increase understanding of the context in which the Justice Centres might operate in the future; and
3. To capture as much demographic, socio-economic and geographic diversity, and as wide a range of justice concerns, as possible.

Between 10 March and 7 April 2014, three sub-teams of four researchers each carried out fieldwork across eight townships in Yangon Region (Hlaing Tayar, Mingalar Taungnyunt, Kyeemyindaing and Khayan townships) and Mon State (Thaton, Mawlamyine, Kyaikmaraw and Thanbyuzayat townships). In each township, the three sub-teams spent two and a half days in three wards and villages (totalling 24 across eight townships). The primary research methods adopted at the community level were participant observation, focus group discussions and key informant interviews with a range of actors.

In parallel with the ward and village level research, the Research Director of EMR and the international consultant met with civil society actors, religious leaders, political party representatives and MPs at township and State/Region levels. In total, the research team carried out 75 focus group discussions and 224 key informant interviews across Yangon Region and Mon State.

Throughout the mapping period, the entire team met on an average of two times for each township to update safety and risk assessments, debrief, and carry out planning.

## **II. FINDINGS: INSTITUTIONAL CONTEXT FOR RULE OF LAW IN MYANMAR**

This chapter aims to provide the general contours of the Myanmar context, and describes some of the main themes that shape the environments in which justice concerns arise and that influence the ways in which individuals and communities seek help in response to justice concerns faced. In reply to the main research questions set out above, respondents shared experiences and perspectives that are presented in this chapter in terms of five themes that run through the narratives: (i) continuities with the past; (ii) echoes of armed conflict; (iii) corruption; (iv) attitudes towards vulnerable and minority groups; and (v) personalities, connections and networks.

It is worth noting that unless otherwise stated, the views and experiences reported below were primarily expressed and shared by research participants situated at the township, State/Region and union levels. Whilst they are not representative of each of the themes explored, they do provide some sense of the range of perspectives on each of the motifs. It is also important to recognise that although the five themes are presented individually in this report, they often intersect with each other in a myriad of complex ways.

### **A. CONTINUITIES WITH THE PAST**

Over the course of the mapping exercise, references were made by research participants to continuities with the past that both give shape to the current national reform process, particularly at higher State/Region and Union levels, and that continue to influence how people engage with State authorities, especially formal justice institutions. The first sub-section below addresses the structural dimension of such links to the past, as observed by research participants of the functioning of the various branches of government. The second sub-section describes an aspect of political culture, particularly one of fear and distrust felt by the general population towards State institutions and its agents, and that is historically shaped by the relationship between those who govern and those who are governed.

#### ***(i) Impact on Reform Process***

General commentaries by research participants at township level and above depict a political culture that is steeped in an authoritarian, top-down orientation, as an inheritance from previous governments. The more vocal opposition political party representatives and Members of Parliament (MPs) articulated what was tacit in the comments of other research participants: that the military continues to play a significant role in government through its 25% bloc in the Pyidaungsu Hluttaw and through the Union Solidarity and Development Party (USDP). Some research participants explained that this majority in Parliament leads to challenges for opposition political parties, at times at the expense of policy-making, and to the legislative and executive branches of government being insufficiently separate, resulting in weak checks and balances. Others spoke of the importance of people's participation, as well as of understanding Myanmar's past and history, in order for the reforms to proceed in an inclusive and principled manner.

One MP to the Pyithu Hluttaw explained that the Bills Committees, among the different parliamentary committees, are the busiest. Whilst there are no restrictions on the freedom of speech and there is open and free discussion in Parliament, the problem for the Bills Committees is that “they cannot make decisions because the Commander-in-Chief intervenes.” The MP also described a top-down culture in policy-making and the challenges of being in opposition:

During the hearings of the last session of Parliament, only the Directors [of the various Ministries] came to listen, and they do not have the authority to make decisions. There are free and open discussions; but when proposals are presented at Parliament, [the party] is in the minority compared to the 25% of the army, and we often lose.

An MP to the Amyotha Hluttaw characterised the relationship between the executive and legislative branches of government as having “weakness in check and balance” and that “the problem is that the government and Parliament are the same body”. The MP further elaborated on two reasons for difficulties in policy-making in Parliament:

The first factor is that the opposition [parties are] weak, and it has to cooperate with the ruling party. Ruling party ministers and MPs are difficult to convince. The second factor is that there are challenges in the implementation of new laws. On the one hand, the concerned ministries are lacking in various resources; and on the other, they are lacking in the concept of providing services to people. ... There is a lack of political will. There are some Ministers who want to change, but there are more who do not want to.

An MP to the Yangon Region Parliament acknowledged the prevailing system to be one of giving and receiving orders, and advocated for raising people’s awareness so as to act as a check on government:

We advocate for [our constituency] because the government has to serve the people’s needs. The problem is that we have been living in an old system for many years, this top-down system. The bottom-up system has only started over the past two to three years. Many people in government still have the old mindset that ‘you have to do what I say’, according to orders. In the current situation, people do not understand bottom-up structures. In order to [promote] accountability and transparency, people need to be organised and made aware.

One civil society representative highlighted the importance of people’s participation in the reform process:

The rule of law is not a focus of the transition, but without rule of law, people cannot feel peace and security. The police and army have responsibility because they have arms. In the past, people with arms were always right. People do not know what the rule of law is, but if they can live without fear and can participate in the changes, the changes can be smooth.

An MP to the Pyithu Hluttaw advocated for working within the current system of governance and allowing practices and processes to stabilize before attempting any amendment to the Constitution. One particularly thoughtful and articulate civil society actor in Mon State spoke also of efforts at engaging with the government, and stressed the importance of understanding Myanmar’s past and history, so as to be able to move forward in any



democratization process. This actor, quoted at length below, also echoed the views of many other research participants regarding the importance of fairness, equality, and justice as values beyond the mere formality of elections:

Most people understand democracy as a system with elections, etc. But I understand democracy as a situation where fairness and justice can flourish. Most people are now acting in a double-standard way, for example, in relation to the treatment of the Rohingya. ... During this transition from military regime to democracy, do we understand where we are going? Look at Myanmar's history: there were kings and the monarchs were never rejected. The British came and got rid of the kings and replaced them with a new system of law. We need to understand the past before moving on to a new system. Right now, we do not understand the past, and things are fragmented into different pieces. We need some conception of where we are going, and of the values of fairness, justice and equality within the system. Because of diversity, only a federal political system will guarantee equality. ... The Mon State government is softer than other State/Region governments because of engagement [by civil society]. What we are doing is not to throw [the government] down, but to try to make the system work. [Whether or not there will be] change is a different question. Before 2010, the system and the people were the same. After 2010, there was a system, and people came into it. We need to see this difference to be able to engage.

This respondent articulated the unexpressed position of ruling party MPs interviewed by the research team who perceive themselves as being separate from the previous military government, and as legitimate participants in this new system of governance.

## *(ii) Fear and Distrust*

Research participants also noted that previous governments have bequeathed a legacy of fear of the State among the general population. One civil society representative explained that this phenomenon is a consequence of a lack of accountability by those exercising public authority:

We cannot have rule of law if people are not responsible or accountable. ... In our society, this [i.e., lack of accountability] is a common culture that we need to change at the grassroots and union level. Over time and years, because of a wide gap between those who govern and those who are governed, there is a lack of trust. Those who govern think that they can do whatever they want; those who are governed think that whatever the people in power do, they do not accept but are forced to because of fear. So they have to ignore [those actions] because they have to suffer the consequences. This phenomenon is almost everywhere. The laws tend to favour those in power, and those who are governed do not protest.

Another civil society actor described this fear by reference to the way authority was exercised by superior officials over their subordinates in the early 1960s, which is symbolic of top-down command authority that remains prevalent today:

In 1962, before being asked a question [by an official], a person received three slaps, and after answering the question, received another three slaps.

Some research participants were of the opinion that this legacy of fear has been reverberating among people since the days of the absolute monarchy. A political party representative stated:

In relation to the [*Vacant, Fallow and Virgin Lands Management Law* and the *Farmland Law*], we go to villages to discuss them with the farmers. People still have fear and think that these kinds of talks are unnecessary. This phenomenon of fear of the rulers has existed since the days of the monarchy, and also during British colonial rule.

When queried specifically about trust in the formal justice system, the overwhelming response of research participants was one of fear and distrust. While some civil society representatives and lawyers point to a lack of knowledge as a cause of such feelings of fear and distrust, the law in general was also variously described as “complicated”, “threatening”, “restrictive” and “elastic”. Although such descriptions comment on the nature of the law as an instrument of public authority, not all respondents necessarily advocated building trust in the law through accountability. For example, one particular civil society representative was of the opinion that people cannot be taught to respect the law, but that they can be taught to fear the law:

People are afraid of demands and orders from the authorities, but are not afraid of the law. If they hear of the law, they think of taking advantage of it. They only deserve brute force, and they do not deserve righteous laws because they lack knowledge and lack discipline.

Besides references to the law as a tool of public authority, some research participants also spoke about other factors that affect public confidence in the law and in the formal justice system. For instance, an MP to the Amyotha Hluttaw commented on the incoherence perceived by the public in the way that laws are created, applied by the police, and interpreted by judges:

Firstly, judges are important when making decisions and interpreting laws. However, the courts and the Law Offices are the places that are the most corrupt. Secondly, the police and [government officers] do not know the law. ... The police also do not follow procedures. ... Thirdly, people do not know the law ... and have no confidence in the law and are weak in following laws. Their perception is that laws do not protect their interests. Laws should treat people with equality. ... The law exists [at one level]; law enforcement is carried out in a separate manner; and judgements are made in another separate way. There is no connection between the three.

Another MP to the Pyithu Hluttaw complemented this view but placed greater emphasis on the issue of bribery and abuse of authority:

We have not trusted the justice system for a long time. The system has been deteriorating since 1962, and it got worse since 1988. It does not protect people. For us politicians, we did not know when we would be arrested, when we would be released, and for what reason. ... If people have money, they will win the case. ... People with money go to court because they can get the result that they want. ... Sometimes, the plaintiff becomes the defendant when they do not have money. Evidence can be made to disappear.

A civil society actor in Mon State similarly commented:

Mon people are afraid of dealing with officials. They are afraid of the courts and the police. The usual pathway is to give money to the police. For serious cases, they do not go to court and run away to Thailand. This is because there is a language barrier, at least within the formal justice system, and especially in rural areas. There is also a lack

of confidence, because when dealing with the police, people are on the losing side. The perception is that the police do not represent the people.

A lawyer succinctly summarised the situation as: “In general, no one wants to go to court. The legal process is resorted to only when there is no other choice.”

The findings in this section highlight the continuing influences of an authoritarian past that impact in various ways on the current reform process, and the fear and distrust that people feel towards the State, particularly in relation to how the law and State institutions are used as instruments of public authority.

## B. ECHOES OF ARMED CONFLICT

Myanmar has been beset by internal strife since the earliest days of its independence in 1948. In the two States/Regions that the research team visited, respondents shared their perspectives regarding ethnic conflict, the impact of past armed conflict, and the ongoing activities of non-State armed groups (NSAGs) in Mon State. The research sites in Mon State included locations that were previously designated as under both government and NSAG control, and that still witness some degree of NSAG activity in the post-ceasefire period.

The first sub-section below reports on a range of perspectives in relation to the political question of the relationship between the Union and State/Region governments, and the second sub-section describes people’s views of the continuing activities of NSAGs following ceasefire agreements.

### (i) *Perspectives on Ethnic Conflict*

A few research participants addressed directly the political issue, which some long-time observers of Myanmar have framed as, “what the nature of the state of Burma should be and how state power (dominated today by the Burman majority) from the centre connects with the periphery, which is dominated by a wide range of ethnic minority groups.”<sup>6</sup> Although the views reported below are not representative, they do indicate great divergence in opinions. This report does not go into any detail about this issue, which is beyond the scope of the mapping exercise. It is briefly noted here as a significant contextual factor that shapes other dimensions of rule of law in Myanmar.

One highly respected Mon leader advocated with great passion for a federal union based on equality of ethnic races:

There has been armed conflict in this country since 1948. ... In this village, there were once 4,500 households and five big monasteries. All of the houses here, as well as in other parts of the State, were burned down by the Burmese, and we had to go into the forests. I saw this with my own eyes when I was a 10-year-old boy. The Mon people have held out until now. ... The 1995 ceasefire agreement that was negotiated with Khin Nyunt, there was no real intention to stop the conflict. The aim was at the

---

<sup>6</sup> Kramer, *Ending 50 years of military rule? Prospects for peace, democracy and development in Burma* (November 2012), p. 3. Kramer argues that the second concomitant conflict is “the struggle over how the state is governed and the absolute control exerted by the military until recently over all executive, legislative and judicial powers.”

removal of sanctions. The problem of armed conflict in Burma is a political problem, otherwise the ceasefire would have no meaning. ... That ceasefire lasted for 17 years. ... U Aung Min and U Ohn Min promised that they would initiate political dialogue six months after signing the ceasefire with the NMSF [in 2012]. Up till now, after two years, there is no dialogue. ... They do not keep their promises, this government, this military government. ... We are advocating for a federal union based on races/nationalities. The government of Burma must accept the equality of nationalities. We will not be separated from Burma. We will live together, peacefully and united. ... International organizations approach the situation in Burma as one of democratisation, and only approach things in one way. It [i.e. the approach] should be about how the nationalities can live equally. They should not confuse the Burmese people between decentralization and self-determination. The problem cannot be solved through decentralization.<sup>7</sup>

On the other hand, a Burman political party representative in Mon State expressed the opinion that the demands of the ethnic armed groups are “too much and too ambitious”:

What we want is the end of armed conflict and [to have] peace. ... With the ongoing negotiations, the armed groups’ demands are too much and too ambitious. They cannot regain everything in one day. ... People in Mon State do not say good things about the Bamar. The ethnic people do not trust the army. It is not just the army; they also do not trust all Bamar people. ... Mon people try to establish their own language, their own government. They do not see themselves as part of the country. I am 65 years old, and there has been armed conflict all my life. I want it to go away. The problem is like holding a lighter to explosives. There are two possible means to resolving it: The first is for the ethnic armed groups to withdraw their demands; and the second is to decentralize from union to state so that people feel ownership.

An MP to the Yangon Region Parliament, while commenting on a whole range of social, economic and political issues on the national reform agenda, also shared some thoughts on the political aspects of ethnic armed conflict and the ceasefire negotiations:

The peace talks at the upper level headed by [the government] lack transparency. Instead of building trust [with the armed groups], it is building peace with human resources and money. It should first build trust, and then distribution of resources can come later. ... The government should be working towards a federal system with fair distribution of power and resources. ... Giving two-thirds power to State/Region governments would be acceptable.

A cabinet minister of the Mon State government also advocated for greater decentralization from the Union to the States and Regions.

## *(ii) Ceasefire Economy*

In the areas that the research team visited that were previously designated as under both government and NSAG control, some local residents and civil society representatives noted a greater sense of security, a certain level of excitement and anticipation at new employment and business opportunities, less fear of being taken away as porters and forced labourers, as

---

<sup>7</sup> References to “Burmese” by the respondent are to ‘Burmans’/Bamar as an ethnic group.

well as greater ease in travel and movement since the reaching of ceasefire agreements.<sup>8</sup> In one particular instance, a NSAG was perceived to be helpful in assisting with the return of trafficked persons, despite the NSAG's indicated interest in recruiting for its own rank and file.

Other research participants, however, commented on other alleged activities of NSAGs that continue to generate some level of insecurity.<sup>9</sup> One civil society representative posed the issue as:

How can people feel safe when there are armed groups? The people do not know who they are.

A local administrator similarly elaborated:

It is difficult to deal with the armed groups. Before the ceasefire agreements, they would not dare to come and go like this in the village. Only after the ceasefire agreements, [the interactions between NSAGs and villagers] became worse. Before we were under the watch of the army in this area, and they were responsible for our security and for others nearby. Now, we have to be more careful with conducting our affairs with the armed groups. We do not know how to deal with them. Everything they say or do involves threats. Because if something were to happen, it would be our responsibility. They should live by the rules. I do not even know if they have rules. In reality, according to the ceasefire agreements, they should follow our laws and rules. In these areas, individuals tend to use their personal relationships with members of NSAGs to resolve their problems.

Political party representatives and civil society actors also alleged NSAG involvement in illegal taxation, drug production and/or trafficking, illegal vehicle importation and illegal cattle trade, oftentimes with alleged government sanction. One civil society actor expressed the following opinion:

There are a lot of problems, for example, drugs and illegal car importation. Who is bringing in these things, we can imagine. But no one dares take action or responsibility. Perhaps there is agreement with the government, and the government turns a blind eye. The ordinary people suffer the consequences.

In an area where State authority is perceived to be relatively weak, another civil society representative elaborated:

On the other side of the river, there is no police post, and there are armed groups (both Mon and Karen), as well as paramilitary groups. Cars are brought in from Thailand and sold to local people. These cars that are unlicensed, people can travel in them within the State and do business if they pay Ks.500,000 to the armed group. Car prices are five times lower than the actual price. These are not official agreements; rather there are unspoken agreements between the armed groups and the State

---

<sup>8</sup> Research sites included areas that have at least some New Mon State Party (NMSP) and Democratic Karen Benevolent Army (DKBA, formerly Democratic Karen Buddhist Army) activity. The first ceasefire agreement between the military government and the NMSP was concluded in 1995; a ceasefire agreement was similarly reached with the DKBA in late 1994/early 1995.

<sup>9</sup> This report does not make a distinction between ethnic armed groups (such as the NMSP, the Karen National Union (KNU), etc.), breakaway groups (such as the Democratic Karen Buddhist Army (DKBA), etc.), militias and paramilitias, unless explicitly stated otherwise.

government. People are afraid of guns. There is no rule of law because there are too many groups: at least three Mon groups, and at least three Karen groups.

An MP to the Pyithu Hluttaw explained the phenomenon of illegal taxation by NSAGs:

People complain about informal fee collections by NSAGs. Those things are happening here because [members of NSAGs] are facing livelihood difficulties.

One civil society actor commented specifically on rule of law in a ceasefire context:

Some members of ceasefire groups are armed, and think of themselves as guarding the law [with weapons]. They also impose taxes. ... In a ceasefire context, do ceasefire groups have the power to enforce the law? There first needs to be a political settlement before rule of law can be relevant.

The indicative findings in this section are largely uncontroversial and acknowledged. Strengthening the rule of law and improving access to justice in areas affected by ethnic conflict involves the challenge of building public trust to an even greater degree, and with more political and institutional complexity and sensitivity, than in areas unaffected by these challenges. It is beyond the scope of this report to engage further on this issue, but it is noted here as an issue that impacts directly and indirectly on the other findings throughout this report.

## C. CORRUPTION

Corruption – involving both bribery and abuse of position and authority – was a theme that was constantly raised by research participants at all levels, from local residents at the lowest village level to Members of Parliament situated at the Union level. A few expressed the view that corruption resulted from economic need; the majority provided no justification or excuse for it but simply recognized corruption as an entrenched problem in Myanmar society. Yet others perceived the issue, particularly in relation to the judiciary, with greater cynicism and characterized it as manipulation of the justice system by higher authorities.

The first sub-section below reports what a few research participants essentially describe as a structural dimension to the issue, that civil servants are inadequately remunerated in relation to the cost of living. The second sub-section addresses the institutional and cultural dimensions of corruption, noting in particular its entrenched nature within the education and formal justice systems.

### (i) *Basic Salary Gap*

A few research participants explained that government officials earn a low salary, and that such insecurity contributes to the phenomenon of corruption. An MP to the Yangon Region Parliament stated:

If the aim is to alleviate poverty and fight corruption, the focus should be on the welfare of government employees. They do not earn enough, and therefore resort to corruption.

Another respondent shared a few examples of the monthly remuneration of government employees: a high school principal is paid USD145; a primary school teacher receives USD100; and a doctor at a government hospital earns USD150. Few also alluded to rising costs of living and general inflation, as well as the estimation that an individual (notwithstanding dependents) required approximately double the amount of income earned in order to be able to live decently. One political party representative cited an example of government employees being expected to bear the costs of hosting a government official's visit (see: Box 1).

**Box 1:**

Officials at the Township Immigration Office were openly asking people for bribe money. I explained that such practice constituted corruption, and the officials replied that they had to host the Deputy Minister and that the visit would cost money. They further explained that they were already indebted, that they did not have sufficient income, and that they had to spend their own money on the State visit. I suggested to them that rather than asking people for money, they should instead ask people to contribute what they can afford, so that in this way the poor can pay less. This is what the officials are doing now.

An MP to the Amyotha Hluttaw commented on the fear of having to deal with a widespread practice that many are personally engaged in:

Basic level government employees do not change their mindsets because they do not get appropriate income or facilities. They are used to the system for the past 40 years since 1974. They have to depend on themselves to make a living. After 1988, the government did not provide for basic needs. For example, judges had no housing or transportation. People became involved in corruption, and it is frightening now to have to deal with it. People at the low levels still get pay cheques, and they have no will to serve the people.

Another civil society representative expressed a similar view that the government bureaucracy represents the biggest challenge to the national reform process due to entrenched bribery and corruption at the personal level, and because of fears of circumscribed institutional power and authority.

*(ii) Entrenched Practices*

More generally, research participants expressed the perception of corruption as a widespread and pervasive problem. One community leader was of the opinion that even with salary increases for government officials, the phenomenon would still persist given its entrenched nature: *khauq yeo kyoe nay pyi* (ခေါက်ရိုးကျိုးနေပြီ; like a crease that is folded into a piece of fabric), and that it would take a generation for attitudes to change, even if such a practice was akin to “watering a poisonous tree”.

Throughout the mapping exercise, the research team heard of numerous accounts of such practices involving a range actors such as General Administration Department officials and local administrators; justice sector actors; school principals and teachers; immigration officials; local electricity committees; and political party members, among others. Several examples are provided below. As with the earlier sections, these findings are not intended as statistically relevant with respect to the scale of the issue, but are qualitatively indicative of the range of challenges related to corruption.

**a) Education system**

School principals and teachers were identified on a few occasions as requiring payments from students and their parents, either in the form of tuition fees for extra lessons or otherwise arbitrary enrolment fees when none were officially required, and at times inflicting corporal punishment on the students when their parents did not pay. One political party representative and former school teacher elaborated as follows:

In the final examinations, the teachers take advantage and give scores not according to the child's capacity. The teachers do not pay attention when teaching in class and focus on their private tuition. Children who go for tuition get higher scores and children who do not go for tuition get lower scores, even if a child [who does not attend private tuition] is bright. If a child does not attend tuition, he or she cannot compete.

**b) Formal justice system**

With respect to justice sector institutions, research participants' general perception was that it is a system that favours those with economic means. A Mon Christian leader stated:

For small problems, people know that if they go through the legal process, both sides will lose because they have to pay the police, the judge and the lawyers. There is no justice and no rights in Myanmar. The police do not help; they take from the people.

One community leader described the role of lawyers within such a system:

[Before or after] the senior lawyer makes beautiful arguments before the judge, a junior lawyer is sent, sometimes accompanied by the client, to the back of the court to meet with the judge (i.e. to make payment).

Another research participant spoke of a "practice among lawyers of taking payments from both sides" and representing clients with either their best or less than best efforts, depending on which side offered a greater fee.

A Muslim leader commented that while cultural minority groups might face difficulties in court due to language barriers, the process would be rendered amenable with some payment. When queried about whether financial means serves as an equaliser for cultural minority groups who might otherwise face differential treatment, the research participant replied that it would be so in a majority of circumstances, although perceived discrimination on the basis of race and religion has increased over the past two years, particularly impacting those without economic means. This leader described in detail the range of expected payments:

Ninety percent of the time, if money is paid, things will be fine. For example, if the family wants to give an accused person who is held in detention some food, they give the police officer Ks.500. If the family wants to see the accused, they have to give about Ks.1,000 or Ks.2,000. People have to pay at every step of the way. If the family pays Ks.3,000 to Ks.5,000 they can give food to the accused, and can see him and touch him. The other 10% of the time relates to cases such as murder and drug trafficking, because the accused cannot hide as the evidence is clear. The accused cannot be released, but will be punished less [if money is paid]. For example, if someone is charged with using drugs and has to take a urine test, the result will be



negative if they pay Ks.400,000. ... How much one has to pay depends on whether the person is right or wrong, rich or poor, and the severity of the case. The judge can decide on a range of sentences for criminal cases, for instance between one and five years' imprisonment. The duration of imprisonment will depend on how much money is paid. Previously the saying was that 'if you have a lot of money, you will win the case'; these days, it is 'if you have no money, you will lose the case'. ... If people have no money, they are treated unfairly based on their race and religion. This has happened more often after the incidents in Rakhine and Meikthila.

The same research participant, when describing a personal experience with the legal process (see: Box 2), also expressed the view that corruption within the judiciary is tolerated by higher authorities who are thereby able to exercise control over judicial decision-making as and when needed:

Those in power are manipulating things, and people cannot escape from the shadow of the authorities. The higher authorities manipulate the judges by letting them take bribes, if there is no big problem. At the same time, judges are obliged to perform their duties by following instructions. It is a form of compromise: we give you this power, and you serve us.

**Box 2:**

Two to three years ago, a group of businessmen wanted to take my land, and used the authority of District and State authorities to support them. The whole legal process took a year and a half, and I spent more than Ks.5 million.

I had all the documents, and eventually won the case, but I was not treated equally in court. Even when I had all the documents, the Law Officers told me that the case was instructed by higher authorities: one minister had given instructions and said to the Law Officers that they could not give their opinions or suggestions, and the Law Officers were afraid of dealing with the case. I had the assistance of a lawyer, and we won at the Township level. But the Law Officers submitted the case to both the District and State levels, and we won at all levels. They threatened to appeal to the Union level, but did not do so after 60 days.

Judges are afraid of pressure from above and cannot make free decisions. I had to pay all three levels of judges even when I had all the documents. If I did not pay, they would have delayed the case. With elastic law, they can either charge or wrongly charge, one way or another.

## **D. ATTITUDES TOWARDS VULNERABLE AND MINORITY GROUPS**

Throughout the mapping exercise, the research team encountered a general environment in which the concerns of vulnerable (women, children, and the disabled) and minority (religious minorities, and migrants) groups are perceived as being less urgent, and at times of less consequence, than those experienced by dominant groups in society. The findings suggest that these attitudes reflect deep-seated socio-cultural norms and values that shape relationships and interactions between different groups – between men and women; between parents and children; between those able-bodied and the disabled; between the majority Buddhist population and minority religious groups; between natives and migrants to an area – and that

affect in significant ways the means by which vulnerable and minority groups seek help in response to justice concerns faced.

Membership in a range of vulnerable and minority groups is generally characterised by poverty, exclusion (whether economic, political, legal or civic/social/cultural), and weak individual protection (whether physical or legal). All three characteristics arise in the findings presented in Chapter III below.

*(i) Women*

Research participants generally described societal attitudes towards women, particularly where outside of urban centres, as conservative. Women leaders explained that most people think of women's role as being 'in the kitchen, and at the back of the house'. One civil society representative commented:

Women are not aware of politics, and still believe that a woman's role is in the kitchen. This needs time, and more role models.

A Mon woman leader stated that:

Women are seen as second class, and are not born leaders.

In relation to concerns that impact directly on women's physical integrity, research participants expressed that women felt shame, humiliation and embarrassment at violence suffered. Victims and survivors of rape are generally seen by others as having 'black spots' (အမည်းစက်: *ah meh saq*) on their reputations that they carry throughout their lives.

Some civil society actors commented that communities tended to blame victims of sexual violence as being responsible for violations of their 'honour', which in turn is related to the family's honour and respectability. One civil society leader in Mon State explained how fear of staining this honour inhibits responding to incidents of sexual violence:

Culturally, parents pretend that nothing happened because of fear.

Findings suggest that wife-beating is accepted as a cultural norm by both men and women. The general perspective of community leaders such as traditional elders (ရပ်မိရပ်ဖ: *yaq mi yaq hpa* and မြို့မိမြို့ဖ: *myo mi myo hpa*), hundred-household leaders and local administrators, the large majority of whom are men and who play a significant dispute settlement role at the local ward and village level, is that 'husband and wife are like tongue and teeth' (လင်နဲ့မယား လျှာနဲ့သွား: *lin neq ma yaa sha neq thwa*). The implication is that whatever happens within the family should be kept within the family, even if the teeth might sometimes hurt the tongue. While some community leaders were of the opinion that husbands and wives should get along, and advised quarrelling couples to go home and ponder over their problems; others expressed a preference for not having to deal with marital disputes as such issues take up too much of their time. Yet others were of the opinion that "husbands have the right to give their wives lessons".

One civil society actor highlighted the challenges associated with confronting ingrained socio-cultural norms, which is the accepted superiority of men over women:

When trying to raise awareness about sexual and gender based violence, what people hear is different to what they have already internalised, which is that men are superior to women. We have to convince the people; and the men [do not perceive sexual and gender based violence as a problem and] are not interested [in the issue].

One young female civil society representative expressed the opinion that although the saying 'only if you break the bones will you be loved more deeply' (အရိုးကွဲအောင်ရိုက်မှ အသည်းစွဲအောင်ချစ်မယ်: *ah yoe kweh aung yaiq hma, ah theh swe aung chit meh*) still had some currency, particularly among men, such attitudes are gradually changing.

### *(ii) Children*

The findings indicate that poverty is a crucial factor in explaining some of the main justice concerns that children face, including having to work to supplement the family income or becoming engaged in petty crime.

The conclusion of one research participant, echoed by others, was:

So long as there is poverty, the issue of child labour will persist.

Even where children are overworked by their employers and not infrequently subjected to physical punishment, their parents typically feel unable to address the situation because they are likely to have taken advance payments from the employers against their children's future earnings.

Where children are involved in petty crime, some research participants were of the opinion that the responses of the formal justice system are inadequate. One traditional elder commented:

There is no juvenile prison or rehabilitation centre here in Mon State, so the police do not take action.

Another local administrator similarly stated:

The police do not want to take action in relation to petty crime as they have to bear the costs.

In certain cases where children's involvement in crime is a result of exploitation by criminal gangs, one political party representative explained their lack of action as follows:

We know the gangs, but have to take care of our own personal security, so we do not dare complain to the police.

With respect to corporal punishment, some parents expressed the opinion that they could teach their children as they deemed appropriate.

### *(iii) The Disabled*

Findings also include some reference to the way the disabled are viewed. For example, some State actors, and even family members, believe that visual impairment appropriately

disqualifies a person from needing civil documentation. This drastically reduces their life chances.

*(iv) Religious Minorities*

During the mapping exercise, the research team heard about the perception that government officials tended to treat different religious minorities differently. One Hindu leader in Mon State explained:

Some people who cannot speak the language and cannot understand the procedures, they have to pay more. If compared with the past, departmental employees who deal often with the public now have a change in attitude, and they are now friendlier than before. If people apply for identity documentation, they pay less than before. They [i.e. departmental employees] treat different people differently, especially religious minorities. Comparatively, they treat Mon people better. It is very common that they treat different people differently. It depends on who you are, and where you come from. For example, whether someone is from a religious or ethnic minority group from a rural area, or a Mon person from a rural area. A Muslim person from a rural area will get more trouble.

Some research participants also spoke of the relationship between the majority Buddhist and minority Muslim populations. In one area, local residents explained that there are a lot of inter-marriages, and that Buddhists and Muslims are like brothers and sisters. In another location, some Buddhist residents expressed fear towards Muslims and of the latter group “taking over” the local area as there were fewer and fewer Buddhists within the community. One monk in the same area explained:

Even though people do not like Muslims and do not want to look at them [i.e. not want to engage], people have to deal with them on a daily basis for socio-economic reasons. In this area, the Muslims own businesses, such as clothing, foodstuff and teashops. They earn money from trade. The Bamars and Mons are engaged in agriculture or are daily wages labourers. Even when monks prevent their followers from buying from Muslims, people have to buy from Muslims in reality. ... This feeling of the two communities not wanting to look at each other has existed for a long time. When the first Qur’anic University was built, it was not officially recognised. But they spent a lot of money during the military regime and obtained official recognition.

The same research participant also spoke about more recent developments:

After what happened in Meikthila, there was an attempted rape of a girl under the age of 16 here by a Muslim. In the past after such incidents, the cases are not brought to trial. They are resolved at the police station with money. In this case, the monk organized the 969 group and put pressure on the police. The case was brought to court and justice was served.

One articulate Muslim leader elaborated his thoughts on more recent developments:

In every society, there are good people and bad people, people who respect laws and those who do not. Over the past year and a half, when there have been small disputes and fights among private parties, they have been perceived as our entire community being responsible. People do not see them as individual crimes. In every religion, there

are moderates and extremists. ... Minorities are treated with discrimination by the majority, and we have no right to express it. I was born in Upper Burma, I am Bamar and I am Muslim. We are Burmese Muslim and have not given trouble and helped with the independence movement. We have been loyal to the country; we are good citizens and good Muslims. As we are in the minority, we have to be patient and not react with emotion. We give advice to our community to be patient, to avoid physical fights and disputes. We dare not ask for money that some people owe to us, because if something happens, it will be reported to 969. Whatever happens, we will respond in a legal way.

Local Muslim residents in a few areas with significant Islamic populations also described conducting their daily activities with greater caution, including returning home earlier in the evenings and ignoring increasing verbal assaults directed towards them, at times for fear of being treated in the same manner as Muslims in Rakhine State and being forced to leave the country. Another Muslim leader articulated feelings of insecurity and expressed his thoughts at the growth of religious movements as follows:

After the incidents in Rakhine and Meikthila, 969 and other movements are growing and supported by parties. Individuals feel insecure and fear of not being protected due to the lack of law and order and the rule of law. Individuals feel like they are losing basic rights. We need mutual respect, understanding of the rule of law, recognition of freedom of religion, and respect for human rights.

An MP to the Yangon Region Parliament similarly echoed:

I am a Buddhist, and I agree that there is a need to protect the religion, but we do not have to harm other religions. There is no need to go to the extreme, such as 969.

One Muslim leader also noted perceived political motivations driving tensions between the Buddhist and Muslim communities:

The government is playing a game because there is nothing that they cannot control. For example, in 1988 things happened throughout the country and they managed to control it. It is not a question of the government's inability because it is not happening in every township in the country now. It is a lack of willingness. ... Yes, there is growing fear between now and 2015. People play a lot of tricks during elections for political gain. We do not want to be scapegoats, and are afraid of being so in the political game.

#### *(v) Migrants*

In the areas that the research team visited where there exist significant proportions of migrant workers, natives in those areas generally perceived the presence of in-migrants as contributing to a rise in general public insecurity and law and order issues.

In some areas, local residents expressed the view that overpopulation and the influx of uneducated migrant workers and labourers from lower socio-economic backgrounds result in "ugly things", including sexual violence against women and girls, happening within their communities.

Some research participants in Mon State explained that there has been an increase in workers from Ayeyarwady and Bago Regions since 2008 who have migrated to fill the gap left by those who have in turn travelled to Thailand, Singapore, Malaysia, Korea or elsewhere for economic opportunities. One Mon research participant commented on migrants in the local area:

Mon people are very peaceful. It was only after the people from central Burma arrived that they caused disturbances, cursing, swearing and drinking.

## E. PERSONALITIES, CONNECTIONS AND NETWORKS

Findings indicate that justice-seeking and dispute settlement behaviour often involves accessing individuals, typically through social networks, in positions of authority (အာဏာ: *ana*) and/or influence (အာဇာ: *awza*). These individuals are considered important at many levels, from providing national leadership to facilitating access to specific government services.

A few research participants who are located at the State/Region and Union levels spoke of “waiting” for good and strong leadership to steer the country during this period of transition. One Mon Christian leader explained:

Right now, we do not have someone who can protect the people, someone we can rely on.

Another civil society representative stated:

It depends on the leadership, and people will follow. The people choose the right person as leader and follow.

Related to the notion of strong leadership, connections with MPs are perceived to be an increasingly important pathway for citizens (as described in Chapter IV below). Members of Parliament are regarded as having greater voice, influence, accessibility and connections, due in part to their being elected to office. In one area, an MP to the Yangon Region Parliament described being contacted on average of twice a week to help people who come into contact with the law:

For example, when people are involved in road accidents and have to face trial in court, they come to us when the decision is not fair. I meet with the Township Judge, the Deputy Township Judge or the police officer and discuss the case, and give suggestions for the decision to be reviewed. There is no outcome in most cases, because when we call them, they say that they will do as suggested and promise to take appropriate action. But after that, they do whatever they want.

This pattern of conduct was particularly observed with respect to land-related disputes where aggrieved parties approached MPs, leading to follow-up action with a range of actors including State/Region and/or Union Parliaments, the President’s Office, Chief Ministers’ Offices and government ministries. In one example, local residents described the efforts of a Pyithu Hluttaw MP in negotiating on their behalf, resulting in residents being able to continue living in their government housing until 2015 (see: Box 3). In another example, a political party representative explained the personal connection with an MP in resolving a land-related issue:

... there was a businessman who was taking sand from the beach, and the local people perceived it as a threat. This company that was taking sand is owned by a [Muslim person], and this activity occurred during the time of religious unrest. We thought that we had to take action immediately, and we sent a letter to the State Parliament, where a former student of mine is an MP. The Parliament sent a letter to the businessman asking him to suspend the activity.

**Box 3:**

In 2011, the government announced the closure of a government-run bicycle factory in the local area, and informed the workers that they had to either move to another factory located in a different township for work, or retire and receive their pensions. As part of their employment, the government had provided the workers and their families with accommodation in government-owned apartments.

Most of the workers in the bicycle factory chose to receive their pensions as they did not want to work away from their families, and were consequently required to move out of government housing. The workers made a collective complaint to the Ministry of Industry, claiming that they had lived in the apartments for decades, and that they did not have the financial means to rent alternative housing on short notice.

The former factory workers also approached their representative to the Pyithu Hluttaw, who negotiated on their behalf with various levels of government, and succeeded in securing a promise that the workers could continue staying in their apartments until 2015.

In addition to land-related complaints, connections with government officials is also perceived to be important in accessing certain types of services, including application for civil documentation and securing funds for village development. The quality of such connections is largely personal in nature. One community leader, for instance, expressed dissatisfaction at having to make payments to government officials despite personal connections with them:

... if people cannot pay money, things will not get done at the Immigration Department for identity documentation. I have connections, especially with the departmental officers; when they see me, they tell me that they are taking care of my family and friends. Just before things are done, they still ask for Ks.30,000 to Ks.40,000, even with connections.

To a degree, the importance of such connections explains the phenomenon of 'brokers': third parties with contacts to individuals within a certain domain, and who make use of these sets of relationships to facilitate certain services, including obtaining civil documentation, migration (oftentimes, illegal) to neighbouring countries for economic opportunities, and brokering illegal transactions (sale, purchase, pawn or rental) on sub-plots of larger parcels of land owned by absentee landlords. Brokers are sometimes retired police officers and army officials, and they exist, according to one research participant, "for all the different [government] departments, including the courts."

## **F. SUMMARIZING COMMENTARY**

Altogether, two main points emerge from the findings presented above. First, State institutions are perceived as only weakly democratic and accountable to the law. This is

reflected in the findings related to the command and control legacy of the past, the entrenched nature of corruption, and of the importance of personal connections to those in positions of power, influence and authority. The implications for institution-building will be explored in Chapter V below.

Second, perspectives in relation to ethnic armed conflict and descriptions of attitudes towards vulnerable and minority groups underscore the quality of governance and the unequal relationship between dominant and minor groups in society. The justice concerns of vulnerable and minority groups are presented in Chapter III, and the nature of societal relationships in Myanmar, as well as its implications for institution-building, will be explored in Chapter V below.



### **III. FINDINGS: JUSTICE CONCERNS**

This chapter describes in some detail four priority justice concerns expressed by local residents in the areas across the eight townships that the research team visited, namely, issues related to: (i) land (broadly encompassing all housing, land and property concerns); (ii) discrimination; (iii) legal protection of women and children; and (iv) public insecurity. These concerns that have been articulated reflect aspirations of individuals and communities towards equal protection and enjoyment of the law, and towards fair and equitable treatment.

Other justice concerns that the research team encountered, but are not detailed in this report, include subsistence issues, loans and indebtedness, as well as illegal lottery and gambling. Some of these issues, such as those related to the taking of loans and being enmeshed in cycles of debt – for example: farmers who use their land as loan collateral; fishermen who spend weeks and months at sea away from their families who depend on their incomes; aspiring migrant workers who ‘invest’ large sums upfront in the hopes of better economic opportunities in other countries; small scale sellers of goods; etc – require further research so that its structural reasons and social impacts on different groups of people are better understood.<sup>10</sup> Other expressed concerns about gambling and alcohol consumption are issues that relate to public order, safety and morality. Like indebtedness, these social concerns merit further applied law and policy research as the regulation of such activities will involve contested views about the role of the State, and about the relationship between the law and local norms and customs.

The following four sections each begin with a general discussion of the relevant background, including any applicable law and policy framework, followed by a typology of sub-issues that the research team encountered, focusing on the range of perspectives and experiences shared by research participants.

#### **A. LAND**

Land-related issues were the single most frequently raised justice concern by local residents in the areas that the research team visited.<sup>11</sup> Land governance and administration in Myanmar is complex, involving some 74 laws, amendments, orders and regulations that impact both directly and indirectly on housing, land and property rights,<sup>12</sup> as well as a range of government

---

<sup>10</sup> For a recent report that begins to look at some of these issues, particularly in relation to attitudes, perceptions and practices around money, borrowing, savings and investments, see: Proximity Designs, *Afford Two, Eat One – Financial Inclusion in Rural Myanmar* (July 2014)

<sup>11</sup> The intensity of land-related issues that were raised in this mapping exercise was, however, less than that in the UNDP Mapping. This can be explained by the geographic differences in the areas where the mapping exercises were conducted: compared to Ayeyarwady Region, Shan State and Mandalay Region, both Yangon Region and Mon State have relatively lower proportions of farmland, which are impacted by the new 2012 *Farmland Law*.

<sup>12</sup> Leckie & Simperingham, *Housing, Land and Property Rights in Burma: The Current Legal Framework* (2009), p. 17.

The figure of 74 cited here accounts for the 73 laws, amendments, orders and regulations identified by Leckie and Simperingham in 2009, and is updated by five new laws that were passed by Parliament in 2012-2013 (the 2012 *Special Economic Zone Law*, the 2012 *Farmland Law*, the 2012 *Vacant*,

entities with often overlapping authority and jurisdiction. Given that the State is the ultimate owner of all land in the country,<sup>13</sup> “all private tenure rights are essentially usufruct”<sup>14</sup> and are regulated depending on how any parcel of land is classified.<sup>15</sup>

Following the April 2012 by-elections and the subsequent easing of Western economic sanctions, both foreign and domestic investment interests soared with capital inflows exerting tremendous pressures on a land market that since 1988 has been characterised by (i) large scale ‘land grabs’ by those affiliated with the State Law and Order Restoration Council (SLORC) / State Peace and Development Council (SPDC) military governments; (ii) non-transparent deals (for commercial, infrastructure and strategic/military purposes) negotiated in the context of ceasefire agreements;<sup>16</sup> and (iii) urban development of cities involving the forcible relocation of urban dwellers.<sup>17</sup>

Along with other national level changes since 2010, those adversely affected in relation to land issues now have newfound voice in expressing their frustration, discontent and anger. The range of sub-issues that the research team learned about in Yangon Region and Mon State include: historic land grabs; private land disputes; (re)classification and sale of land; slums and squatters; competing use of public spaces; as well as cases that involve non-State armed groups (NSAGs).

### (i) Land Grabs

The research team learned about cases of land grabs that took place during the socialist era and throughout the SPDC regime in a majority (14 out of 24 wards and villages) of areas visited during the mapping exercise. Most of the land had been utilized for agricultural purposes prior to being confiscated for development of industrial zones, building of higher education institutions, expansion of military barracks and road construction.

The types of land that were confiscated included farmlands and garden lands that were being cultivated, community-owned vacant land, community-owned pasture land, and *dama oo cha* (ဓားမဦးချ) lands.<sup>18</sup> In addition to land grabs, houses were at times also removed. In one example, 64 homes were reportedly removed for road construction schemes.

Some of those whose lands were taken away stated that they are in possession of land certificates such as Form 105,<sup>19</sup> La Na 39 (လန/၃၉),<sup>20</sup> and Leh Myae U Paing (လယ်စေ့မြို့ပိုင်)

---

*Fallow and Virgin Lands Management Law*, the 2012 *Foreign Investment Law*, and the 2013 *Protecting Rights and Enhancing Economic Welfare of Farmers Law*), including their corresponding repeals.

<sup>13</sup> Constitution of the Union of Myanmar (2008), Art. 37.

<sup>14</sup> USAID, *Burma – Property Rights and Resource Governance Profile* (May 2013), p. 10.

<sup>15</sup> See: USAID (May 2013)

<sup>16</sup> See generally: Transnational Institute, *Developing Disparity – Regional Investment in Burma’s Borderlands* (February 2013); and Transnational Institute, *Access Denied – Land Rights and Ethnic Conflict in Burma* (May 2013).

<sup>17</sup> See: UN Habitat, *Human Settlements Sector Review: Union of Myanmar* (1991)

<sup>18</sup> Ancestral farmland with no paper documentation or registration.

<sup>19</sup> A certified map issued by the Land Records Department following an application by persons who require it for various purposes such as building a structure or changing use of land.

<sup>20</sup> La Na 39 refers to ‘subject to section 39 of the *Land Nationalization Act 1953*’. The provision stipulates that the President or the authorities appointed by the President, may direct that any agricultural land be utilized in a specific manner.

Numbers,<sup>21</sup> and that they have kept farmland and garden land tax receipts as evidence of land entitlement. The research team learned in only one area (out of 14), where local residents insisted that they do not have any documentation, that *dama oo cha* land was recognized as official land entitlement.

In all cases of land grabs that were reported to the research team, land was taken by force, and very little notice provided in some instances (see, for example, Box 4). Those who were affected by such actions were not properly informed about the purpose of the confiscation and they did not receive fair compensation for the land taken from them. They generally perceived such acts to be “unlawful” and “arbitrary”, and that there was “lack of justice”. Some also expressed the opinion that they would never get their lands back, and that there is no hope.

**Box 4:**

I originally had five and a half acres of land with 1,200 rubber trees. More than two acres were confiscated for the land development schemes in 1999, and I had 3.2 acres left. But in 2000, the rest of my land was confiscated for the development of an industrial zone. My land had an U Paing Number and also G-3 status. At that time, my rubber trees had started producing latex for 45 days. We were very happy and dreamt about our future because of rubber production.

The District Administrator and Secretary came with two colonels to the village, who ordered the rubber plantations to be cleared within a week. They told us that they would clear the land with bulldozers if we failed to clear the land by ourselves. One of the colonels said, “The land is owned by the State. Even the soil in your flower pot is State property.”

I finally hired labourers to clear the plantation as I did not want to kill myself. I almost lost my mind. I even forgot to have my meals. My wife cried day and night. Without my land, I had to earn a living as a labourer. All of my children had to leave school.

My land is now divided into 100 feet plots. I can see that four of those plots are not being utilized. I heard that confiscated lands are to be returned to the original owners if they are not utilized three years after announcement of a project. It has now been 14 years. I am now making efforts to reclaim my land, and contacting one of the Members of Parliament for our constituency.

In addition to the arbitrary nature of land grabs, a few research participants also explained that lands that were not included in the confiscated area were sometimes wrongfully taken by other third parties. One research participant explained:

I originally own 10.43 acres of land. Half of it was confiscated for industrial development. According to the clerk of the Industrial Zone Oversight Committee, however, my land was not included as part of the confiscated areas. It was occupied by the secretary of the Industrial Zone Oversight Committee. But I have evidence: I received land tax invoices until 2013.

Throughout the mapping exercise, the research team learned about a range of actors who were involved in land grabs, including the State, and State-affiliated organizations, individuals, and private companies. During the socialist era, State actors confiscated land for State policy projects such as the Model Workers Scheme, the Myanmar Rubber Project, and the Marine

---

<sup>21</sup> Permanent land use rights.

Science Institute. According to research findings, during the period of the military government, land was not only taken by State actors for policy projects (including industrial zones, road construction, and development of military bases), but also taken by government-affiliated entities and individuals for private interests.

A few research participants in Mon State explained that the building of army bases in the local areas increased after 1995 when ceasefire agreements were made between the government and NSAGs. They stated that the army seized lands by force, and that it was not unusual for regiments to claim a much larger area than the actual, fenced off barracks. If the original owners wanted to enter the area claimed by the regiments, they were required to give the army a share of the rubber produce. The respondents also explained that some form of tax was typically imposed on the entire area claimed by the army for its subsistence, and that the form and amount of tax would differ from regiment commander to regiment commander, and from area to area.

Some other research participants in Yangon similarly commented on what they perceived to be the army taking more land than actually required:

100 acres are sufficient for the [...] Township Guards military regiments; but they took 500 acres.

Where the research team learned of land perceived to be confiscated by government-affiliated organizations and individuals for the interests of a limited group of people, they included the army, the intelligence services, the Prisons Department, the Forestry Department, and the Union Solidarity and Development Association (USDA). These confiscations were reported to the research team in two townships involving *dama oo cha* lands and community-owned vacant and pasture lands.

The local residents from one area detailed that “the nipa forests on the east side of the village were sold by the Forestry Department, and the pasture lands on the other side of the village are gone because of confiscations by the USDA, the army, the intelligence services and the Prisons Department”, and that the army rented out the confiscated land to farmers at 10 baskets of rice for each acre. A political party representative also spoke about the local administrator and secretary at the administrative office who sold 20 and 40 acres of community-own pasture land respectively.

Where private companies were involved in land confiscated by the government, they generally applied for entitlement to the lands, though they typically also did not develop it for many years following receipt of utilization permits. In some cases, the original owners reoccupied the lands and cultivated them for agricultural purposes. In other instances, the private companies had fences erected after farmers tried to reoccupy their lands.

A few political party representatives in Hlaing Tayar Township echoed:

In 2003, the industrial zone was developed and 16,647 acres were confiscated. The companies [...] applied to the government for land entitlement. But they applied for entitlement without utilizing the land for years. They made fences as the government [recently] ordered that lands be returned to farmers if they are not properly utilized.

Throughout the period of the military government, those whose lands were taken did not dare reclaim their land, even when they remained unused for over a decade, for fear of arbitrary actions by the government. One research participant shared:

My land is currently occupied by a car production company. But the land was unused for over 14 years after it was confiscated.

The general opinion of respondents is that those with money, in cooperation with those in positions of power, colluded to abuse others. In one particular instance where a private company was perceived to have confiscated the community football field, community leaders of the local area complained about the environmental and health impacts of the company's activities:

The company grinds gravel and boils tar with the verbal permission of the Chairman of the Regional Executive Committee. But it creates dust, and the pungent smells from tar boiling are inhaled by the villagers all the time. We demanded that the company put up a chimney, but it was in vain.

While the findings with respect to land grabs are not exhaustive, they are consistent with publicly available reports that address both the national and more regional situations.<sup>22</sup> The key finding is that decades of irregular land allocations, through both formal and informal mechanisms, have left a legacy of grievances that will be complex to resolve.

#### (ii) *Private Land Disputes*

Private land disputes were reported in almost all wards and villages visited, and included boundary disputes, ownership disputes arising from informal transactions, inheritance-related disputes, and disputes arising from speculation.

Two general observations at least partly explain an increase in the frequency and complexity of land disputes. The first is that expectations of the Myanmar economy have soared alongside national level reforms, leading to significant inflationary pressures on land and property prices. In this regard, passage of both the *Farmland Law* and the *Vacant, Fallow and Virgin Lands Management Law* in 2012 appear to have led to an increase in private land disputes. This is partially explained by the perception that formal entitlement to land can now be obtained following an application process, and that such entitlement should be acquired lest the interest is jeopardized.

The second observation is that private land-related transactions appear to be largely regulated by sets of informal understandings and practices that exist outside of the formal legal framework. These understandings are increasingly being tested given heightened expectations of wealth due to higher land and property prices. In this context, justice concerns include issues of access to fair and transparent mechanisms for resolving competing rights claims.

#### (a) *Boundary disputes*

Boundary disputes were noted by research participants particularly in rural areas, encompassing both farmland and residential plots. Disputes over farmland boundaries usually arose when farmers rebuilt their earthen embankments in the fields. There is a general

---

<sup>22</sup> See, for example: COHRE, *Displacement and Dispossession: Forced Migration and Land Rights – Burma* (November 2007); Karen Human Rights Group, *Losing Ground: Land conflicts and collective action in eastern Myanmar* (March 2013); HURFOM, *Disputed Territory: Farmers' fight against unjust land acquisition and barriers to their progress* (October 2013).

perception that despite the existence of maps in the Land Records Department, they are not accurately drawn, which then encourages such kinds of disputes. One local administrator explained:

The most common cases here are farmland embankment boundary cases, and all of them are settled locally by us.

There are no official grants for residential areas in more rural locations, where compounds are not distinctly delineated and are usually marked by trees or other structures. These markers tend to be easily changeable, thereby leading to disputes when neighbours try to change boundaries in bad faith. A local administrator explained:

There were 14 or 15 disputes in relation to compound boundaries last year. There are no grants for land here in this area, so people are living with [informal] understandings. Now that land prices are becoming dramatically higher, conflicts over boundaries are also increasing among neighbours. We have to equally allocate the disputed areas, and urge people to build fences.

**(b) Ownership disputes arising from informal transactions**

Ownership disputes related to the rental, sale, purchase and pawning of land were also mostly reported in rural areas. The research team learned that such transactions were generally conducted verbally, especially where they involved family members or relatives, as formal agreements were not perceived to be necessary. One lawyer in a relatively remote area shared a case:

A person rented out four acres of his land to his nephew for a fee of Ks.60,000 per acre for one season of bean cultivation. When the person demanded the rent payment, the nephew stated that he did not need to pay because the land was given by his grandfather [to the uncle]. ... The man had to finally sue his nephew.

In some instances, local administrators themselves facilitated the sale and purchase of land, and in other cases settled disputes relating to lands pawned for loans. One research participant described his role with respect to the latter:

[One woman pawned her land to another under *leh pyan ngwe pyan* (လယ်ပြန်ငွေပြန်) terms],<sup>23</sup> but both applied for land entitlement [under the new land laws]. So we had to solve the problem by asking the original owner to make a [mortgage] contract and to repay her debts. We have a lot of similar cases in the four villages under my village tract.

In one particular case, the research team learned about a farmer who was imprisoned as a result of conspiracy and corruption following an informal loan transaction (see: Box 5).

**Box 5:**  
A farmer who was in a lot of debt pawned his land according to *leh pyan ngwe pyan* terms. The lenders conspired with the Township Administrator, village administrator and the Land

<sup>23</sup> Literally: farmland return, money return. In general, borrowers borrow in cash or in kind from lenders, who in return are given either land as collateral and/or land utilization rights. Such agreements are very frequently verbal and usually do not include specific terms.

Records Department to transfer the land taken as collateral from the farmer into land entitlement for the lenders. The farmer did not accept this and ploughed on his land. The authorities then put him in jail.

*(c) Inheritance-related disputes*

Inheritance-related disputes between siblings and relatives were commonly heard by the research team in both rural and urban areas. According to respondents, these disputes typically surfaced when some siblings perceived the distribution of properties by their parents to be unfair (see, for example, Box 6).

**Box 6:**

An old man gave one acre of farmland and one acre of garden land to this son and daughter born to his first wife. He gave the remaining 15 acres of farmland to this second wife as she cared for him when he was old and sick, and she herself also became older. The second wife had been looking after the old man for more than seven years after he had a stroke, and all of her gold were also gone. The son and daughter wanted more land, and they applied for land entitlement under the new land laws.

*(d) Disputes arising from speculation*

In Mingalar Taungnyunt Township, the research team learned about disputes between different parties making entitlement claims on certain properties, which were fuelled by speculation of property development in an area (see: Box 7). In other instances, the research team heard of disputes which arose between landlords who wanted to sell for significant profit properties that had already been leased and tenants who refused to move out of the premises.

**Box 7:**

In the local area, some people who had been staying in apartments that were originally built by the State for government employees started selling (the right to live in) the apartments in the 1990s. These transactions were informal and based on an understanding between sellers and purchasers, both of whom did not have official entitlement to the apartments. The parties typically made a contract before the local administrator and mutually known third parties, who were witnesses to the contract.

In 1994, a person 'purchased' an apartment for 10 lakhs, and had a contract made with the seller. The contract was, however, lost over a 20-year period. In 2014, a rumour circulated that condominiums would be constructed on land where the apartments are currently standing, leading to prices of the government-owned apartments to increase to between 800 and 1,000 lakhs. This resulted in the original sellers' claims that they did not 'sell' the apartments and their assertion of rights over the property.

*(iii) (Re)classification and Sale of Land*

A separate source of land conflict that the research team learned about involved overlapping and conflicting classifications of land. An MP to the Pyithu Hluttaw commented on the overlapping entitlements issued by the Forestry and Land Records Departments:

The Forestry Department issued permits for growing rubber, and people grew rubber for several years. However, those lands [on which the rubber trees were planted] are vacant lands in the records of the Land Records Department. As such, those lands were included [initially] in plans for an industrial zone, and subsequently [included as part of plans for] residential development for which grants were distributed to other third parties. When those people with grants looked at their land, they learned that it is covered with rubber plantations. For the rubber producers, it is also difficult for them to move because their plantations are at the rubber-producing phase. This happened because the government departments did not thoroughly verify the land situation when they planned schemes.

Other research participants commented on the role of public officials in the (re)classification of land, especially following passage of the 2012 land laws, which provide officials from the General Administration Department (GAD) and the Settlement and Land Records Department (SLRD) of the Ministry of Agriculture and Irrigation with significant discretion in granting land entitlements, and which do not subject such discretion to any independent review. One political party representative who was a former official at the SLRD stated:

When companies want land, they go to the township GAD and SLRD offices. There are two types of land: R1 and R2. The deal is negotiated by the land expert, who is from the SLRD. The SLRD identifies the type of land, and sets the price.

Another political party representative explained:

There are people who owned land from five to seven years ago. Although they did not work on the land, they have Form 105 and they pay taxes. But people from the administration and government claimed that the land was vacant and sold them. These cases are becoming more frequent.

#### *(iv) Slums and Squatters*

The research sites for the mapping exercise included slum areas where squatters live. In some instances, migrant workers who moved to more urban areas in search of work become squatters, whereas in other instances, communities are forced to become squatters as a result of displacement. A few research participants explained how this came to be. A respondent from Hlaing Tayar Township detailed:

Those people mainly migrated from the Ayeyarwady Region. They were allowed to live on vacant land in the community by the ten and hundred household leaders by taking some amount of money, between Ks.5,000 and Ks.10,000, thus leading to squatters in the community.

One community leader in Mon State explained how a village was displaced and how its residents became squatters:

Fifteen years ago, farmlands and garden lands in our village were confiscated for [plans to build] a prison. The lands are ancestral lands, but were stipulated as garden lands. We were initially given a place on the football grounds of the village by the village administrator, but we were removed after a year. With nowhere to go, we came into the city and lived in the vacant spaces in the ward. We cannot build toilets.



The local people do not like us living here. But the administrator told us not to move now, and that he will arrange a place for us after the census.

One research participant in Hlaing Tayar Township also noted how certain business interests are capitalizing on squatters' demand for residential areas and are making profit as a consequence:

Recently, 3,000 squatters near the Pun Hlaing Bridge were removed by the government. There is an island near the bridge, and it was occupied by business people who transformed it so that the island had the appearance of a residential area. Residential plots of 20x60 feet were apportioned, and they also built roads. The plots were then sold to the people. At first, it was only 15 lakhs a plot, but it was later increased to 50 to 60 lakhs a plot. There were over 2,000 squatters within seven to 10 days. Within a month and a half, however, they were all removed. In fact, the authorities were aware of the situation at the very beginning and they should have stopped it before anything concrete emerged. Now it is the people who suffer. At the same time, there are also a lot of people who deliberately occupied the place even though they have homes elsewhere in the expectation that they would be able to obtain some compensation if they were removed.

#### *(v) Competing Use of Public Spaces*

Particularly in the urban wards, local residents spoke about competing use of public spaces around markets, schools and construction sites, which are frequently occupied by vendors and other small businesses such as umbrella and bicycle repair stalls. One research participant described how disputes arise in one local area:

There is a plan for the market, but there is only land with no other facilities. So people have started selling on the streets. Initially, there were only one or two vendors, but gradually more began to occupy and spill out onto the streets. When cars pass on the goods, there are disputes. ... Officials from the municipality come to remove the vendors, who in turn escape once the officials start blowing their whistles. Once the municipal officers leave, the vendors return.

Another respondent expressed the opinion that "street vendor problems cannot be easily resolved as administrators and municipal officers themselves are taking money from [the street vendors]."

One street vendor expressed disappointment at having to comply with increasing demands made by the authorities:

When we are asked to cover the stall with tarpaulin sheets, we cover. When we are asked to buy umbrellas, we buy. Now we are upset with selling only during the day and having to close at night. I have three school children, and also have my own problems. And now again, they ask me to move and retreat. I am disappointed.

#### *(vi) Land Issues Involving Non-State Armed Groups*

In one area of Mon State, the research team learned about the activities of a particular NSAG in relation to utilization of community-owned pasture land and collection of taxes. One research participant, who was allegedly shot at by a member of the NSAG for threatening to

report the NSAG to the township administration for detaining another farmer whom the NSAG accused of trespass, detailed as follows:

The current land taken by [the NSAG] is pasture land, and vouchers are given when taxes are paid [to them]. The pasture land is used by 150 farmers as nurseries. The [NSAG] was initially growing rubber in the nearby fields, and then gradually started growing them in the pasture land that farmers mainly use as nurseries for paddy plants. The [NSAG] did this in cooperation with the township administration, which also seemed afraid as [the NSAG] are carrying arms. The [NSAG] promised before the township administration that farmers would not be harmed for the two-month duration when they used the pasture land as paddy nurseries. The farmers also informed the township administration whenever they were going to use the land for growing nurseries. But the [NSAG] accused us of trespassing their land despite several warnings.

## B. DISCRIMINATION

The 1982 *Citizenship Law* provides for three categories of citizenship:<sup>24</sup> citizenship;<sup>25</sup> associate citizenship;<sup>26</sup> and naturalized citizenship.<sup>27</sup> Depending on which class of citizenship a person is qualified for, he/she is issued with a pink (citizenship), blue (associate citizenship) or green (naturalized citizenship) Citizenship Scrutiny Card by the Township Immigration Office. On its face, the *Citizenship Law* discriminates principally on the basis of race or ethnicity.<sup>28</sup> Whilst it is not specified in the law, those entitled to full citizenship must belong to one of the 135 “national ethnic groups” officially recognized by the government.<sup>29</sup>

There are different entitlements to the three different categories of citizenship, and some research participants who did not have ‘pink cards’ felt that they are not treated equally and articulated aspirations for equal treatment. While some others expressed resignation at the entrenched nature of such inequality, there were also those who said that they were “numb” and “had no feeling” because they were “used to it”.

Other research participants commented that the public should be provided knowledge about citizenship laws, and that different government officials should work together to enable people to obtain civil documentation. One traditional elder stated:

---

<sup>24</sup> In contrast, both the 1947 and 1974 Constitutions provided for one general category of citizenship: Constitution of the Union of Burma (1947), Art. 10 and 11; Constitution of the Socialist Republic of the Union of Burma (1974), Art. 145.

For a nuanced consideration of racial identity and citizenship issues, see: Transnational Institute, *Ethnicity without Meaning, Data without Context* (February 2014)

<sup>25</sup> Section 7.

<sup>26</sup> Section 23. The cut-off date for application for this category of citizenship was in 1982.

<sup>27</sup> Sections 42 and 43.

<sup>28</sup> Sections 3 and 4. For present purposes, ‘ethnicity’, ‘race’ and ‘nationality’ used interchangeably.

<sup>29</sup> Section 3 of the law provides that persons belonging to the eight national races – Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine and Shan – are recognized as citizens. Following entry into force of the 1982 law and its related procedures, the government released a list of the 135 “national ethnic groups”.

It should also be noted that section 6 of the law provides that persons who are already citizens at the time the law came into force are recognized as citizens, meaning that it would have captured persons who did not fall within the list of 135 if the law had been applied in an inclusive and non-arbitrary manner.

I believe that everyone should have equal citizenship rights. I have been to many countries, and I know that it is not easy to obtain citizenship here. If you live in this country, if you sing songs from this country, if you bow to the national flag, I am not going to discriminate against you.

In about half of the areas (10 out of 24 wards/villages) visited by the research team, local residents spoke about experiences of unfair and unequal treatment, particularly in relation to application and obtaining of civil documentation. Those who expressed such concerns also described other related difficulties with regard to livelihood, professional and professional opportunities, and freedom of movement.

#### (i) *Civil Documentation*

Research participants who articulated experiencing unfair and unequal behaviour from public officials with respect to application and acquisition of civil documentation were from lower socio-economic backgrounds, of mixed race parentage, of minority religious groups, and/or had a physical disability.

The research team observed that as a general matter, where discrimination was practised on the basis of religion, appearance and place of origin (impacting, for example, migrant workers and their families who have moved from their native townships to other States/Regions), factors such as the personality of the immigration official, the amount of money paid, as well as the existence and nature of personal connections play significant roles in determining whether a Citizenship Scrutiny Card can be obtained. For the respondents who fall within these vulnerable and minority groups, applying for identity documentation typically involved giving a relatively small amount of money to the local administrators for recommendation letters, following which much larger payments were made to brokers who approached the Township Immigration Office and applied for the documentation on the respondents' behalf.

#### (a) *The poor*

In general, those with limited economic means perceived possession of civil documentation as being only available to those with money. One research participant described the sentiment as follows:

It is an issue of money, if we have money, we can bribe [the officials]. Identity cards are only for those who have money; it is difficult for the poor.

Another respondent who is Mon Buddhist and a former soldier similarly commented:

Do not even talk about identity cards. It costs about seven or eight lakhs. We cannot go to the office ourselves, and have to go through a broker. It would be easier if we had a reference from someone above. But we have to use a broker. It would never work if we tried to do it ourselves. Right now, I only have a three-fold card (သုံးခေါက်ချိုး: *thone khauq khyoe*).<sup>30</sup>

---

<sup>30</sup> National Registration Card, which was issued under the 1949 *Residents of Burma Registration Act* and the 1951 *Residents of Burma Registration Rules*.

In addition to financial cost, another research participant alluded to the cumbersome paperwork application process, and to other challenges associated with not having identity documentation:

No one [from both sides of] the family is in possession of the family list. I came here to work just for a while, but ended up staying for five to six years. There are squatters like us who do not have family lists. We do not have enough money to go back to our hometowns to get the necessary documents. It is a modern era, we should be able to work these things out through phone, fax, etc. (i.e. digitally). Right now my family is living in this ward as guests. I cannot get ID card without Form 10, also because I am a temporary resident in this ward. There are a lot of people who do not have ID cards. There are some people who will borrow other people's ID cards to apply for jobs. There are people in legal battles and they do not have ID cards, which makes it very difficult. We cannot apply for a phone without ID cards. We cannot get on a plane. Even if we are educated, we cannot get the actual degree, and cannot get jobs. If we have all the necessary documents, we can get it overnight. If they just require the names of our parents and grandparents, we can at least lie.

One civil society organization situated at the State/Region level explained that the Ministry of Immigration and Population had initiated a project with the intention of facilitating distribution of Citizenship Scrutiny Cards:

The Moe Pwint project was initiated by the Ministry of Immigration and Population in April 2012. It is intended as a one-stop service [for people to obtain Citizenship Scrutiny Cards], and the service starts with general information sessions to the community. If an individual did not have proper documentation, a recommendation from a five-person verification team (consisting of the Township Education, Planning, Health, Immigration and Administrative Officers) would suffice.<sup>31</sup>

**(b) Persons of 'mixed race' parentage**

Another group of respondents who spoke of difficulties in obtaining civil documentation were those who identified themselves as 'mixed race'. One respondent who self-identified as a Muslim Pathi elaborated:

Mixed race people cannot get ID cards, even if you are half-Bamar half-Mon. It was possible in the past, but now it is not. Now it does not matter what race your father and mother are, if your grandparents are mixed race you cannot get identity cards. Even if we get documentation, it is only the three-fold card. I used to have an ID, but now I do not because when I renewed it they gave me a three-fold card.

Another research participant shared:

I have not changed my identity card since I was 13. My father was Buddhist Bamar, and my mother was Muslim Kalar/Pashu. They told me I was mixed-race and would not give me an identity card, so I did not renew it.

A few research participants in one local area explained that although their mixed race identities, such as Pathi-Mon and Pashu-Mon, were previously recorded in the family

---

<sup>31</sup> The Moe Pwint project reportedly covers only Kayin, Kayah and southern Shan States.

registration lists, such classifications were cancelled after 1988, and they were re-registered as “Bengali” by immigration officials. The result of such actions was that these individuals could only obtain ‘three-fold cards’, for which they said they had to pay more than Ks.100,000 for a single document.

One research participant emphasized that having significant financial resources would diminish the ‘race’ requirement when applying for civil documentation:

If you pay, you do not have to wait that long, you can get it within two days. In the whole village, there are not even 10 people [who can afford to] have pink cards. ... You do not just need money for the pink IDs, you need to be of a certain race. Compared to the three-fold cards, it costs much more. But if you can pay, your race will not matter.

The research team was not able to verify whether the Pashu and the Pathi were previously listed as one of the ‘national races’,<sup>32</sup> although such classifications at present do not appear in the list of 135 “national ethnic groups”. A second observation to be made is that religion, particularly that of the Islamic faith, appears to be a common denominator for most of those who identify as ‘mixed race’.

### (c) Religious minorities

As indicated above, the *Citizenship Law* discriminates primarily on the basis of race or ethnicity; the law, on its face, does not discriminate on the basis of religion. In reality, however, given that conceptions of ‘race’, ‘ethnicity’ and ‘nationality’ in Myanmar are intimately intertwined with religious identity, stipulations of the *Citizenship Law* do have an unequal impact on religious minorities. For the majority of self-identified Muslim respondents that the research team met with, they were unable to articulate which race or ethnicity they belonged to. On the other hand, they were frequently referred to by others as “kalar” (ကုလား), a term that was observed to apply simultaneously to Muslims and to persons with South Asian features, depending on the context. A “kalar” respondent stated:

A kalar is a person just as a catfish is a fish (ကုလားလည်းလူ၊ ငါးလည်းငါး: *kalar leh lu, nga khu leh nga*). Why are we being discriminated against?

One Muslim research participant detailed that although she and her husband had ‘pink cards’, their children only had ‘three-fold cards’ because of their religion:

Three of our children only have three-fold cards, so they cannot get degree certificates. If we wanted [ID cards], we would have to spend one lakh per card. It is because of our religion. [Our daughter] finished her degree two years ago, but we still do not have the certificate.

Another respondent described how he was forbidden by an official from wearing his traditional Islamic robes at the Township Immigration Office:

---

<sup>32</sup> The Pashu are believed to be Malay Muslims belonging to the Austronesian-speaking peoples, and concentrated around the southern tip of Myeik (Mergui) Archipelago. The Pathi are now more commonly known as Burmese Muslims or Myanmar Muslims, and are linguistically and culturally assimilated into Myanmar society. The term ‘Pathi’ was used by King Bodawpaya, and believed to be a corruption of ‘Parsi’, referring to traders and mercenaries of Persian ancestry. During the colonial period, the British used the terms ‘Zerbadee’ (in the 1891 census, for example) and ‘Burmese Muslim’.

When I went into the Immigration Office, the officer prohibited me from wearing my traditional long robe. I felt very sorry about this. So I did not go [again] to the office by myself, and made a three-fold card through a broker and spent Ks.80,000. [I heard that at other places,] the price of the ID card is only Ks.6, but it is Ks.60,000 when they give it to you in the office. If I do not have a pink card, I cannot graduate, and also cannot be an engineer or a doctor. Nothing has happened here for a very long time, but after 1990 we cannot easily get ID cards.

In one local area with a majority Muslim and minority Hindu population, local residents explained that immigration officials automatically assumed all of the inhabitants to be “Bengali” (see: Box 8). A Hindu leader from a different location separately commented that “it is difficult these days for Hindus, Chinese and Muslims to get green cards (National Registration Cards), which used to be considered full citizenship.”

**Box 8:**

If a person is from this village, it does not matter which race he or she belongs to. The person is marked as ‘na’ (န). Having ‘na’ marked on the identity card means that the person is under suspicion. Even a Bamar person was marked as ‘na’.

In this township, the population of this village and the one next to it are perceived by the township immigration officials to be 100% “Bengali”. They do not accept or listen when people try to tell them. If someone is from this village or the next, they just automatically assume that the person is “Bengali”. There is nothing that can be done about it except feel bad.

Throughout the mapping exercise, the research team also learned of a few instances where applicants who wanted to renew their existing pink civil documentation ended up getting ‘three-fold cards’ instead. All of these applicants were Muslims. Further research would be required to determine the existence of other populations who might similarly be disqualified from citizenship.

**(d) The disabled**

A fourth group of research participants who expressed difficulties in relation to application and acquisition of civil documentation were those who had a physical disability. In the only area where the research team encountered visually impaired respondents, one of them elaborated as follows:

It is difficult for other people to think of us as citizens with the same rights. Most of us blind people do not even have identity cards because of our own families or because of immigration officials. Some families assume that there would never be an occasion when we would need one, so they did not help us register for a [Citizenship Scrutiny Card]. For others, the immigration officials declared that blind people have no need for civil documentation. As a result, we cannot apply for passports without identity documentation. This keeps us from studying abroad. We also cannot vote. The law and the Constitution were not written to favour the disabled. We are neither supported nor protected by the law. It is difficult for us when we get involved in anything remotely related to the legal process. A lot of us are afraid to even hear the word. We feel we are punished for our disabilities rather than protected.

Whilst the findings in this sub-section are not exhaustive, they are indicative of the range of groups that face discrimination in their attempts to gain recognition as full citizens.

### *(ii) Livelihood, Educational and Professional Opportunities*

Some of the research participants who articulated difficulties with obtaining civil documentation also spoke about challenges in relation to accessing livelihood, educational and professional opportunities. A Muslim respondent explained:

We cannot attend any vocational institute with the three-fold card, and we cannot graduate, so we cannot apply for jobs. We have to make a living with selling goods. We do not know where to go and what to do to get ID cards.

One visually impaired research participant also elaborated on his personal experience of having to diminish his ambitions:

I obtained high marks after finishing Grade 11, and wanted to choose a science major at the university, but did not get a chance to do so due to my visual impairment. I also wanted to choose a music major and applied to the Arts University because I wanted to sing and play music instruments as a professional. But I was denied entrance because the rector of the university cancelled my application because he thought that blind people could not afford music classes. We are victimised by people in decision-making positions, who have no sympathy and understanding of blind people. So I could only choose the normal arts major, and abandoned my hopes of studying the music major, and changed my future plans.

### *(iii) Freedom of Movement*

During the mapping exercise, the research team also learned that some respondents faced unfair and unequal treatment from public officials and NSAGs whilst travelling, at times as a result of concerns that relate to their identity documentation. One research participant elaborated as follows:

I gave a broker Ks.50,000 who obtained a three-fold card for me. But it is written “Bengali” under ‘Nationality’ in the card. They put down “Bengali” when I said my religion is Islam. My ancestors were born in Myanmar, and I cannot speak “kalar” language. ... I am always faced with difficulty when travelling because of the word “Bengali” [in the card]. When they investigate at the toll gates, I will give some money. Immigration officials always extort money from me when I see them. [Non-State armed groups] are also the same. They let me go if I pay money.

Other respondents described having their identity documentation confiscated unless certain sums of money were paid:

When we go to Myawaddy, they ask for our [Citizenship Scrutiny Cards] at the toll gate. If they find that the card reads “Bengali” under ‘race’, they confiscate it. We would not get it back until a certain amount of money was paid. The buses that we travel on are not patient, so we have to make a quick decision to either pay or let go of our [Citizenship Scrutiny Cards]. Also, men are made to pay more than women.



Other research participants stated that the police did not just target Muslims, but also those who looked “kalar”, when they stopped vehicles on the road to collect fees, the purpose of which were not explained to those who had to pay.

In general, those who faced such hindrances in movement commented to the research team that they chose not to travel if that was possible.

### C. LEGAL PROTECTION OF WOMEN AND CHILDREN

In all of the eight townships that the research team visited, it encountered a range of legal protection issues that affect women and children in particular. Some of the more serious issues included: sexual violence, domestic violence, human trafficking, child labour, and children involved in substance addiction and petty crime.

Under the 2008 Constitution, women in Myanmar are afforded a measure of equality with men.<sup>33</sup> In addition to the Constitution, there exists a range of domestic laws,<sup>34</sup> as well as applicable customary law,<sup>35</sup> that are relevant to women’s access to justice. Myanmar is also State Party to the *United Nations Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), to which it acceded in 1997. In its analysis of domestic laws and their compliance with CEDAW norms, the Gender Equality Network commented in 2013 that since “Myanmar’s legal framework is drawn from a mix of colonial and traditional sources ... [m]any of its laws are not compatible with CEDAW, as they incorporate restrictive gender stereotypes and are inconsistent with the promotion and protection of women’s rights to substantive equality.”<sup>36</sup>

At present, the Government of Myanmar through the Myanmar National Committee for Women’s Affairs, is committed to a 10-year plan that aims at “promoting and protecting the human rights of women” and at “ensuring ... [the creation of] an environment that nurtures the substantive equality between women and men”.<sup>37</sup> The National Strategic Plan for the Advancement of Women (2013-2022) sets out 12 Priority Areas, which are based on the Beijing Platform for Action and on CEDAW principles. They relate to livelihoods and economic issues, education, health, violence against women, humanitarian emergencies, the environment, participation in public life, human rights, the media, girl children, as well as a comprehensive framework for advancing goals in these 12 areas.

---

<sup>33</sup> Constitution of the Union of Myanmar (2008), Art. 348, 350 and 351. Article 352, however, provides that: “The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.”

<sup>34</sup> Such as the 1860 *Penal Code*, the 1898 *Code of Criminal Procedure*, the 1872 *Evidence Act*, the 1949 *Suppression of Prostitution Act*, the 2005 *Anti-Trafficking in Persons Law*, the 1954 *Buddhist Women’s Special Marriage and Succession Act*, the 1872 *Special Women’s Marriage Act*, the 1869 *Burma Divorce Act*, the 1982 *Citizenship Law*, as well as relevant directives issued by government authorities (such as Order 1048 (1/2000), which legalises the possession of condoms).

<sup>35</sup> Section 13(1) of the *Burma Laws Act 1898* provides that customary and religious codes have the force of law and can be relied upon by the courts in decisions concerning succession, inheritance, marriage or caste.

<sup>36</sup> Gender Equality Network, *Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws* (January 2013), p. 1

<sup>37</sup> Dr. Daw Myat Myat Ohn Khin, Chair of the Myanmar National Committee for Women’s Affairs, Preface for the National Strategic Plan for the Advancement of Women (2013-2022), p. 1



With respect to children, Myanmar became State Party to the *United Nations Convention on the Rights of the Child* (CRC) in 1991, and has enacted the 1993 *Child Law* and the 2001 *Rules Related to the Child Law* to give effect to its international obligations. Critically, however, the *Child Law* has a restricted definition of a child (a person below the age of 16 rather than 18);<sup>38</sup> a low minimum age of criminal responsibility (seven years of age, with conditional judgment based on maturity up to 12 years of age);<sup>39</sup> no specific provision for minimum legal age of marriage; and no explicit provision against corporal punishment of children.<sup>40</sup> Furthermore, because “the CRC does not have constitutional status in Myanmar ... its provisions can be overridden in court by existing national rules and laws.”<sup>41</sup>

Similar to efforts aimed at advancing substantive gender equality, the National Committee on the Rights of the Child has been committed to a National Plan of Action for Children (2006-2015) to support Myanmar’s commitments to the CRC and the Millennium Development Goals, among other initiatives.<sup>42</sup> The Ministry of National Planning and Economic Development and UNICEF in 2012, however, observed that “the National Plan of Action has no dedicated resources to monitor progress and the extent to which it is achieving its aims has yet to be reviewed.”<sup>43</sup>

### (i) *Sexual Violence*

In a majority of areas visited by the research team, it heard of 19 incidents of sexual violence committed against women and girls. In one specific research site, the research team learned about a particularly high proportion of cases (five out of 19) involving five child victims in total. This location was observed to have a few active child protection organizations, one of whose members explained that these incidents were attributable to stressful living conditions in an area that is over-populated by uneducated workers from lower socio-economic backgrounds.

Among the incidents that came to the attention of the research team, the preponderance of cases (15 out of 19) involved girl victims between the ages of six and 15/16 (students in the 10<sup>th</sup> Standard, or 11<sup>th</sup> Grade). The majority of perpetrators in these cases were known to the victims and their families, including step-fathers, teachers, employees of the family, brother-in-law, employer, neighbour and dentist.

Most of the noted cases (nine out of 15) involving girl victims were reported to the authorities, oftentimes with the assistance of third parties such as child protection organizations, political parties, religious organizations and neighbours. In some instances, the police are perceived as not being proactively helpful when such cases are reported to them, thereby requiring the assistance of third parties in making legal claims (see, for example, Box 9). Such ineffectiveness on the part of the police is lending to a perception that it is weak and ill-equipped to protect vulnerable members of society.

---

<sup>38</sup> *The Child Law* (SLORC Law No. 9/93), 14 July 1993, s. 2(a)

<sup>39</sup> *The Child Law* (SLORC Law No. 9/93), 14 July 1993, s. 28

<sup>40</sup> Ministry of National Planning and Economic Development & UNICEF, *Situation Analysis of Children in Myanmar* (July 2012), p. 4

<sup>41</sup> *ibid.*

<sup>42</sup> Ministry of Social Welfare, Relief and Resettlement & National Committee on the Rights of the Child, *Myanmar National Plan of Action for Children (2006-2015)* (January 2006), p. 3

<sup>43</sup> Ministry of National Planning and Economic Development & UNICEF, *Situation Analysis of Children in Myanmar* (July 2012), p. 4

**Box 9:**

Last year, a 14-year-old school girl who was on her way home late at night was forcibly taken by a 23-year-old married man to a guest house and sexually assaulted.

When the incident was reported to the police, the officers concluded that it did not constitute rape. The evidence that was submitted (the girl's clothing) was returned to the girl's parents and the alleged perpetrator released on bail.

The girl's family suspected that the alleged perpetrator had received help from several military officers resulting in his release, and the family in turn approached the 88 Generation Peace and Open Society for help. Members of the organization referred the case to a lawyer who initiated a case at the Township Court, and the alleged perpetrator was taken in for detention without bail.

The 88 Generation Peace and Open Society continued to offer support to the girl and her family; but the principal of the school that the girl was attending asked that she be transferred to another school for fear that the incident would tarnish the school's reputation. The girl and her family moved away to a different township.

The research team learned of four incidents of sexual violence involving (adult) women victims, where the perpetrators included a stranger, a co-worker, the victim's employer, and a soldier. The case involving the soldier was a particularly high profile one that multiple respondents in Mon State spoke about, and for which the Court Martial delivered a verdict of eight years' imprisonment during the course of the mapping exercise. Where a woman was raped and killed by a co-worker in a rubber plantation, the perpetrator was sentenced to 10 years' imprisonment. In the incident involving a woman who is perceived to be of lesser intelligence and her employer, the woman gave birth to a baby and her employer was alleged to have paid of a large sum of money to government officials to conceal his actions.

During the mapping exercise, the research team also learned of one instance of sexual violence involving a boy victim (see: Box 10). The research participants who related this particular case were of the opinion that girls are two times more likely to be affected by sexual violence than boys.

**Box 10:**

In October last year (2013), a man who was known to the child victim and who lived not far away from a rubber plantation was found one day to be forcing the child to perform oral sex on him. The nine-year-old boy was crying when found performing oral sex in the rubber plantation.

The man was arrested with the involvement of the local administrator and the Community Support Group (CSG). The man was sent to court for trial. The case is taking longer than other cases that we know of because witnesses are needed, such as people who were involved in the arrest of the perpetrator and those who heard of the case. We expect a good outcome.

However, when the man was detained, his family asked that a case not be initiated against him and offered Ks.600,000 [to the child's family]. The boy's parents wanted to accept the offer, but the CSG refused and expressed a strong reaction to such behaviour and did not want similar incidents to happen in the future. We are concerned that the man's family may try to bribe and police and maybe the court. The boy is living with his aunt and

grandparents, and they agree to solve the problem in court. His parents may be persuaded by the money offered because they are living far away and have to travel to court.

Where cases of sexual violence are not reported to the formal justice system, they are sometimes settled at the ward or village level by local administrators through mediation and compensation. In one area, a woman leader explained that nine out of 10 such cases are settled through mediation, given the costs – both direct and indirect – associated with accessing the formal justice system. In other instances, another woman leader explained that such cases are “not reported to the local administrator or anywhere because of shame.”

One civil society actor was of the opinion that the poor suffer disproportionately from such issues:

The poor without money know that they are treated unfairly. They cannot express themselves because they do not have knowledge and lack education. For example, in the case of a child victim of rape, we suggested to the family to file a suit, but the child does not know how to testify. There is no way to make a child testify in court. The family is poor and cannot afford the fees. And what about the future of a child who is only about five or six years old? There was no suit for the sake of the child’s dignity. Many cases like this disappear without going to court.

Some civil society actors working on gender-related issues explained particular challenges associated with their work, including sensitivities related to use of the word ‘perpetrator’ (ကျူးလွန်သူ: *juu lone tu*):

For example in cases where men claim to be seduced and deceived, and end up committing the act, they do not want to be labelled with the word ‘perpetrator’.

Others commented on the legal focus with which survivors of sexual violence are treated, which ends up discouraging victims and others from reporting such incidents:

Because [rape] is a cognizable offence, a person who knows of it must report to the police or risk being charged with omitting a crime. By law, it is the duty of the doctor to report any case. When the police know of a case, they take the survivor to hospital for a medical check, but there are usually no female doctors. They cannot refuse a male doctor. At the hospital, instead of protecting the privacy and confidentiality of victims, the focus is on the legal process. This discourages people from reporting.

It should be noted that the findings reported above are insufficient to establish the statistical prevalence and patterns of sexual violence committed against women and children in Myanmar. They are, however, indicative of the range of risks to personal security faced by women and children and justify further applied policy research, which would provide the necessary baseline to track efforts to strengthen health, legal and other support services. The findings also suggest that third parties such as child protection organizations and political parties are playing an increasingly important role in supporting survivors of sexual violence and their families, and in facilitating claims through the justice system. Some of this may be attributable to the changing political environment where individuals and communities are beginning to be able to speak about sexual violence, particularly where children are affected.

(ii) *Domestic Violence*

The research team heard of incidents of domestic violence across all eight townships and all 24 wards and villages during the mapping exercise. Local residents did not generally view the issue as a legal protection concern, however, as both male and female research participants generally accepted husbands' beating of their wives as a culturally tolerated and very common practice: *hpyiq yoe hpyiq sin* (ပြစ်ရိုးပြစ်ဝှံ) and *yoe nay pyi* (ရိုးငနပြီ). In addition to its physical aspects, domestic violence was generally understood by respondents to include verbal and emotional dimensions.

When asked to explain this tolerance of what amounts to serious and persistent violations of personal health and security, respondents offered various reasons husbands are heads of households, husbands are the main wage earners of their families and control household expenditures, husbands have the power to influence the family environment, most wives do not contribute to family incomes, and most wives are uneducated. One Muslim woman who was observed to have scars on her arms spoke also of not wanting to break up the family because of children, and expressed her feelings as follows:

I want to do something to my husband, but I cannot, so I hurt myself with a knife. How can I report it to the authorities? What he feeds, I have to eat. What he gives, I have to take. When he beats, I have to accept.

Most cases of domestic violence were attributed to alcohol. This was noted by one community leader, who also commented on the 'habitual' nature of domestic violence:

There are cases of domestic violence here. Husbands usually beat their wives when they are drunk. Last night, I had to deal with three couples. They are from good economic backgrounds, but this is their habit. If the husband is imprisoned, the wife will follow and bail him out. How can I solve these problems?

In some areas, research participants expressed the opinion that drunkenness was aggravated by difficult economic circumstances and hard physical labour. One respondent explained:

There are many cases of domestic violence here. As the socio-economic situation is not good, there is a lot more drinking going on.

A few respondents also explained that women who experienced violence in the home typically did not speak out about such incidents to anyone, but that since the establishment of the Myanmar Women's Affairs Federation (MWAFF), have begun reporting cases to its members who usually cooperate with the local administrators. When cases of domestic violence reach the village or ward authorities, the local administrators typically mediate between the couple and warn against future occurrences. After the second or third appearance before the local administrator, the offending party is usually made to sign a document (ခံဝန်: *khan wun*) promising not to repeat his (or her) actions. Cases of domestic violence are sometimes reported to the police, but are rarely resolved at court. A local administrator shared his experiences of dealing with cases of domestic violence, including referring cases to a legal organisation:

Everybody comes to me and complains about everything, including domestic violence. When women [who are abused by their husbands] are not happy with the results of my mediation, I link them to [a legal organization] that can provide advice. In cases of

domestic violence, when they happen repeatedly, I make the perpetrator sign the *khan wun*. If they continue and do it again, I impose a fine and a *kyae kyoke* (ကျယ်ချိန်).<sup>44</sup> But we do not have cases here that are reported to the court.

One research participant who is a nurse in the local area elaborated on the challenges faced by women when seeking help in response to violence at home:

Domestic violence is very common here. When women suffer injuries, they do not seek medical help. They also do not go to the police. The police are usually indifferent and say that it is just a dispute between husband and wife, and so the wives go to the Women's Affairs Federation. I am only one person, and sometimes I cannot handle [the cases] all by myself. Women could go to higher authorities, but they do not know how. On the other hand, they also do not dare to go. ... They say that they have reported the incidents to the local administrator, who will call [the couple] in and talk to them. And nothing changes.

A local member of the MWAFF also expressed some resignation at being unable to provide effective assistance to affected women:

When affected women come to us in cases of domestic violence, we do not have any power, and can only help them with writing complaint letters to the police and courts, and provide some guidance to them for reporting the cases. ... We cannot take effective action ... and can only mediate and ask the husbands to sign *khan wun* because we have no authority and lack legal knowledge.

In some areas, affected women approach the police directly for assistance, particularly where a police post is located in close proximity to their homes, and where affected parties are immigrants to an area and do not know the local administrators well. The research team learned of one particular instance where a drunken husband beat and strangled his wife, who reported the incident to the police post that was located near their house. The police officer warned the husband about repeating such actions.

Where women are more economically independent and/or have membership in civil society organizations, they were observed to have greater voice and to more likely be able to articulate any abuse experienced at an earlier stage. One local member of the MWAFF described her own experience as follows:

My husband was drunk and talking back at me and made me feel angry and ashamed. So I reported him to the police station and had him confined in a cell. I told the police officer to not release him if I did not bail him out. He was detained for one night at the police station. But his boss went and bailed him out. [My husband] never did that again.

A few women who are more empowered were also allegedly responsible for assaulting their husbands. In one instance, a woman who was the main wage earner of the family tried to attack her husband with a cleaver when he did not help her with carrying the implements after selling fish in the market.

---

<sup>44</sup> A *kyae kyoke* can refer to stocks, or to a restriction order.

It is generally rare for a couple to seek divorce because of domestic violence, even where the abuse suffered is of a grave and life threatening nature (see, for example, Box 11). Research participants explained that couples generally reconciled after fighting. A local member of the MWAF elaborated:

Many cases of domestic violence have been reported to us since the Women's Affairs Federation was established. The number of reported cases has now decreased slightly because we do not have time to sit and listen. So they go to the local administrator who calls the couple to his office, tells them to think about their problems and to reconsider their decision (about getting a divorce), and asks them to return in a week. Most reconcile and get back together because they are couples, and the violence only happened when the husband was drunk.

**Box 11:**

In one area, a man had tied the legs and arms of his wife with rope, sealed her mouth, and poured boiling water on her naked body.

The neighbours reported the incident to the Women's Affairs Federation and the local administrator, all of whom went to the house to apprehend the man. He had knives next to him, and injured a member of the MWAF with a pair of scissors when they tried to confront him.

Most of the WAF members and the local administrator felt ashamed for the woman. A member of the WAF untied the ropes and helped her put on some clothes.

The wife wanted a divorce and reported this to the local administrator. Her husband readily agreed and also promised to keep away from her. The woman was satisfied with the divorce, and did not have further complaints. One month later, however, the wife and her husband got together again.

On one occasion where the research team learned about the divorce of a Muslim couple, it involved both religious authorities and the courts (see: Box 16 below). A local member of the MWAF explained:

The religious authorities rarely allow divorce unless the marriage is getting really out of control. They will not let couples get divorced on their first visit. Only after a while and if the problem has not gone away will they let the couple get divorced. For some people, they do not want to wait as long as the religious authorities ask them, so they go to the local administrator.

As with the earlier sub-section, the findings reported here are not quantitatively representative of the incidence of domestic violence in Myanmar. They do, however, suggest that the scale is likely to be widespread, particularly given local cultural norms, and justify more targeted research efforts to determine its statistical prevalence, scope and patterns, all of which will be important in formulating baselines, policies and programmes for addressing the issue through a multi-dimensional approach.

*(iii) Human Trafficking*

With respect to human trafficking, the research team learned about 10 incidents in four of the areas visited. Beyond reporting on the perspectives and some of the individual experiences

shared by research participants, it is not possible, on the basis of the mapping findings, to discern broader trends and patterns of trafficking in persons in Myanmar. It is, however, recognized that human trafficking takes place within the context of large-scale migration – both internal and cross-border – and the links between the two phenomenon are complex.<sup>45</sup> Collaborative efforts between the Government of Myanmar, UN agencies (such as the International Organization for Migration (IOM), and the UN Inter-Agency Project on Human Trafficking (UNIAP)) and other donors have led to important activities resulting in some encouraging analysis of the trends and patterns of human trafficking following enactment of relevant legislation.<sup>46</sup> The Second Five-Year National Plan of Action to Combat Human Trafficking (2012-2016) elaborates on further efforts – targeting five areas of policy and cooperation; prevention; prosecution; protection; and capacity building – over the coming period to deal “dynamically”<sup>47</sup> with the issue.<sup>48</sup>

The majority of cases that the research team learned about were from Mon State, where one research participant explained how the phenomenon of human trafficking began and observed changes in trafficking patterns:

In 1988, many were forced to leave because of the political situation. Those who were already on the other [i.e. Thai] side asked those here to join them. This was when trafficking began. ... Now this is taking place in another form. Neighbours and relatives traffic without knowing that they are engaging in trafficking. It is not [between] strangers. People also do not realise that they are trafficking people. They think that those people are my relatives, and I have the right to ask them to come to work. ... This has happened alongside the political changes.

Some respondents explained that most of those trafficked were uneducated, easily misled into working elsewhere with higher salaries due to low incomes, and those who wanted to escape their existing circumstances. One local representative of the MAAF, who observed that most trafficking victims were females, expressed the opinion that those women and girls wanted to be rich and to live a luxurious life.

Cases of human trafficking are sometimes not reported to the formal justice institutions when the families of trafficked persons feel that they are able to resolve the problem themselves. In one instance, a mother who missed her son threatened the broker who had arranged for her three children to work in Thailand with reporting the case to the police, and was able to have her son sent back to Myanmar by involving the local administrator who negotiated the outcome. In another instance, the family of a 15 year-old-girl and a member of a child protection organization were able to convince the woman who had allegedly arranged for the girl to follow in her married lover’s footsteps to Myawaddy to reveal where she was hiding.

In other cases, research participants commented on the costs associated with making a legal claim, and on a lack of trust in the police. In one example late last year involving a 16-year-old youth who was deceived by his neighbour into working on a fishing boat in Thailand, the youth

---

<sup>45</sup> See: UNIAP Myanmar, *The Trafficking Situation in Myanmar*, at <http://www.no-trafficking.org/myanmar.html> (accessed 7 September 2014); and IOM, *Myanmar*, at <http://www.iom.int/cms/en/sites/iom/home/where-we-work/asia-and-the-pacific/myanmar.html> (accessed 7 September 2014)

<sup>46</sup> See: Ministry of Home Affairs, *Myanmar: Second Five-Year National Plan of Action to Combat Human Trafficking (2012-2016)*, pp. 3-4.

<sup>47</sup> *ibid.*, p. 26

<sup>48</sup> *ibid.*, pp. 8-26.

and his mother decided against making a legal claim due to the costs involved and also because they did not want to create tensions with the neighbour. In another example, the police were alleged to have deliberately changed the criminal charge (from trafficking in persons to pornography) because they did not want to incur expenses that they would have to personally bear for carrying out investigations.

A youth who shared his experience of being trafficked last year also expressed a lack of trust in the justice system:

I did different types of work, and since I did not get along with any one, I went to work in Malaysia last year when I was only 18 years old. [In Malaysia,] I worked as a mason and earned 45 Malaysian Ringgit a day, but the boss never paid me regularly. I was betrayed when I believed a friend over there who introduced me to work on his uncle's boat. I was left on the fishing boat and did not get paid any money. If a worker fell ill and did not do any work, they were thrown into the sea. If the worker asked for his salary, he was shot and thrown into the sea. Luckily, my boss died and I ran away, but I had no money and only one shirt. I wanted to sell the shirt and use it for travelling expenses but a Malaysian gangster stole it. Later, I met some Myanmar people and we helped each other to come back home. When I came back, I did not report my experience because you know the condition of Myanmar's justice system. I think it will not make a difference and change anything in my life.

#### *(iv) Sex Work*

During the mapping exercise, the research team heard about certain perspectives in relation to sex workers. In one area, a civil society actor explained that there are two types of commercial sex workers:

The first works in brothels and they do not face direct exploitation by the police, who ask for money from the pimp or madam. Sometimes, the sex workers have to provide free services. The second type freelances and works on the street. If the police need cases, the sex workers are arrested and charged. Sometimes, the police pretend to charge them because they are found in dark places and threaten them. The purpose is to have sex. ... Some sex workers start at about 14 years old, though it is most common for them to be between 16 and 18 years of age. For those between 14 and 18, they are usually at the brothels. After 18 years of age, they tend to move around to KTV bars, massage lounges, etc. because they are considered old. ... For some, this area is a transit point. They stay here for a while, and continue staying if things go well. They would like to go to Thailand to earn more money.

Other respondents expressed the opinion that sex workers tarnished the image of the local community, and that their presence leads to fights and contributes to general insecurity in an area. One research participant elaborated:

They are living separately along one street and that is good for the reputation of the residents in the area [i.e. that they are living away from the general population]. I think no one wants to work like this but this is their fate.

Some respondents also commented that sex workers who had worked in Thailand infected the local community with diseases when they returned to Myanmar. One medical doctor was of the opinion that sex work should be legalized:



If [prostitution is] legalized, we can prevent the transmission of diseases, and we will be able to provide better delivery of medical services, and there will be better protection of commercial sex workers. ... There should be a law protecting commercial sex workers, and it should make provision for checkups for transmittable diseases.

*(v) Children and the Law*

In a majority of areas visited by the research team, it observed and learned about a few protection concerns faced by children. These include corporal punishment, child labour, and children involved in substance addiction and petty crime. In one area, the research team heard of a particular case where the parents of a 16-year-old girl arranged their daughter's marriage to their creditor (see: Box 12).

**Box 12:**

Last year, the mother of a 16-year-old girl arranged for her daughter to marry their creditor, a 50-year-old man who lived in a different village, allegedly so that the family did not have to repay their loan.

After the girl's mother and aunt left her at the creditor's house, she ran away and was chased by the creditor. The incident created a commotion, leading to the local Women's Affairs Federation and child protection organization members approaching the local administrator. The administrator together with the Township Police then went to the creditor's house, where the girl informed them that she was staying voluntarily without being forced by anyone. The next day, the girl and the man got married at the Township Court. The day after registering the marriage, however, the girl again ran away and did not return.

These findings are indicative of a priority justice concern that merits more targeted research, building on the efforts of UNICEF and other organizations focusing on child protection issues. Further exploration of this sensitive issue, which requires specific methodological innovations, was beyond the scope of this mapping exercise.

*(a) Corporal punishment*

In relation to corporal punishment, some parents expressed the opinion that they were entitled to teach their children as they saw fit. In one incident that was shared with the research team (see: Box 13), research participants stated that parents should be given trainings and taught about child rights so that they will not abuse their children. A civil society representative commented that parents should be given trainings so that they would know about the legal consequences of violating children's rights.

**Box 13:**

A 10-year-old boy and his disabled mother were living together with an aunt and her husband. The aunt frequently beat the boy, and when told that she should not do so, she said, "He was very bad, that is why I beat him. It is none of your business. I'm just beating my own child." The aunt once tied the boy to an electricity post, and she and her husband beat him. The boy was not seen for eight years, and has now returned and says that he is a soldier.

**(b) Child labour**

Where the research team encountered the issue of child labour, it was observed that it impacted those from poor families or children who are orphans. In one area, a research participant explained:

As parents keep hearing from their neighbours about how they are able to earn extra income by making their children work, they do it and this has become a bad habit.

Other civil society representatives echoed this view, stating that poverty is the main reason for child labour. These respondents also explained that parents are not able to make demands of abusive employers once they have taken advance payments based on their children's future earnings. In one area, a research participant stated:

In the past, the income of the head of household was sufficient for the entire family. But now, it is not sufficient even if the whole family works. The children are forced to work by their parents because [the economic situation] is so hard for them. They also cannot bring their children back home even when the children are in trouble because of the contract [made] and the money that they had taken in advance from the employer.

The research team learned that children most commonly worked at teashops, markets, and sometimes in private households as domestic maids. Some research participants spoke of child workers at teashops being beaten, slapped and hit with sticks by their employers; and one respondent mentioned instances of housemaids being caned and having boiling water poured on them by their employers.

Some research participants also described the challenges faced in making claims against the children's employers. In one example, a respondent spoke of the costs involved in making a legal claim:

The mother is a vendor at pagoda festivals, and the father who is disabled is a trishaw driver. The parents sent their 12-year-old child to work at a teashop to earn more money. The shop owner overworked the child, and if the work is not completed, the child was beaten. Sometimes, the child was beaten with the hand, sometimes with a stick, and sometimes slapped. The beating went on for about three to four months and the child was not happy. Customers at the teashop, passersby and neighbours talked to the child's father about the situation so that he could inform the authorities, but the parents could not do so because they were in need of money. Starting a case with the authorities or the police station would cost more. The child is the victim either way.

In another example, a respondent described lack of knowledge about accessing justice as a challenge:

When the child first arrived at the teashop, things were OK. Later, the boss hit and punished the child as if he owned the child. The child's parents could not do anything because they had taken the employer's advance of two or three months' wages. The child was not happy but he could not repay the money. He asked us if he could inform

the authorities, but he ended up getting beaten by the boss instead. No one knows how to report to the authorities and how there can be justice.

**(c) Children involved in substance addiction and petty crime**

During the mapping exercise, the research team learned in one area and observed in two others (in Mingalar Taungnyut, Hlaing Tayar and Kyeemyindaing Townships) where children are involved in substance addiction and petty crime. A few research participants explained that the children are being exploited by gangs whose members ask the children to beg or commit petty crimes, and that the children are made to inhale smoke from burning industrial glue (used to connect plastic pipes), which keeps them addicted. One research participant explained that “the children can live without eating if they inhale [smoke] from burnt glue.” Another civil society representative explained:

There are children who are addicted to inhaling burnt glue. The gang makes them steal and beg and they take the money from the children. ... I asked the children who is behind this, and I know that they are criminal gangs. I cannot do anything for my safety and I do not have any solid proof.

One political party representative similarly elaborated:

There are children who are addicted to glue, but it is not illegal. When pieces of metal in our bicycle factory yard go missing, we only catch the children. And we cannot arrest them. I think there are people behind this. Although we contacted some social service, it was not effective, so we no longer contact them. ... The community knows who is behind this but they are afraid as there is a gang at the other end.

Research participants also commented that children are exploited because they do not attract severe punishment when arrested given their juvenile status, and that glue addiction is not criminal, which discourages the police and authorities from taking action.

## **D. PUBLIC INSECURITY**

Issues in relation to public insecurity were reported in all 24 areas visited during the mapping exercise. The research team learned about five main types of criminal activity contributing to a general sense of public insecurity in the areas studied: homicide; physical assault; public intoxication causing nuisance and violence; theft; as well as extortion and blackmail. The majority of research participants attributed the sense of insecurity to inadequate policing.

Others, such as local administrators, as well as ten and hundred household leaders, however, commented on what they perceived to be the wilful negligence of police officers:

The police do not take necessary action, and they do not want to be busy. They ignore some crimes, and sometimes release offenders after detaining them for 24 hours. This is why offenders are encouraged to commit crimes.

An MP to the Yangon Region Parliament gave an example of what was perceived to be the symbiotic relationship between criminal elements and the police in one area:

... a group of gangsters entered a house and attacked the people in it with knives. There is a police post close to the house, but no action was taken [by the police officers]. The villagers felt unsafe and contacted me, and I called the police station. About 10 to 15 officers were sent to the house, and they reported that they could not find the perpetrators. The leader of the gang is a big gambling dealer, and nephew to the local administrator, so he can do whatever he wants. The thing that has most influence is money. The police cannot take action at the township level because they are 'fed' by the gangsters. At the crime scene, the police-in-charge was present but no action was taken. Two knives were seized. When the case was opened, the police instead of investigating said that the problem should be solved in a peaceful and convenient way. No action has been taken against the offenders. The rule of law does not exist in favour of the people.

A few respondents were of the opinion that people are weak in understanding the law, and that the law "is not perfect enough" in providing suitable penalties and punishments.

One lawyer who is a former judge explained what was understood to be the government's policy for law and order, and how judges feel compelled to convict defendants in cases brought by the police:

When the police investigate cases and they are forwarded on to the courts, judges do not dare dismiss cases when there is a lack of evidence. Judges feel compelled to give punishment because they fear that if a case is discharged based on legal reasoning, their positions will be in jeopardy. Certain types of activities that are criminalised, for example theft and prostitution, are termed as 'character cases', and are perceived as policy cases. The government's perception is that more and more crimes will impact on society's peace and tranquillity. Crime prevention and crime reduction is therefore important.

The most commonly reported concerns affecting public security were intoxication resulting in public nuisance, destruction of property, assault, and in some instances, death. These incidents happened with relative frequency across all 24 wards and villages, particularly in the poorer parts of the areas, and were usually settled by warnings issued by local administrators or police stationed in the local area. One research participant explained:

Those who get drunk and create public nuisance in the area have to sign a *khan wun* committing to abstain from such acts. But the commitment was violated, and they were imprisoned, and they continued with such behaviour after they were freed and are now imprisoned again.

Physical assault was also frequently reported by research participants in a majority of areas. These incidents typically involved male youths, and are mostly related to intoxication and drug abuse. In some cases, physical assaults resulted in deaths. In a few areas, local residents perceived such problems to be a result of migration to Thailand, and that youth who worked there have been negatively influenced by other cultures.

During the mapping exercise, the research team learned of a few cases of theft, burglary and pick-pocketing. The cases reported were thefts of motorcycles and cattle, and burgling of cash and gold.

Few homicide cases were also reported to the research team. These cases typically involved disputes over possession of money or property. One research participant related a particular

case of a police officer who was killed by boatmen who perceived the officer to be threatening their livelihoods:

The boatmen had increased their fares, and a policeman refused to pay the new price and urged other passengers to do the same. The boatmen told the police officer that he did not have to pay the increased fare if he did not want to, but requested that he not tell other passengers to pay the previous, lower fare. The officer refused, and the boatmen did not allow him on their boats. The police and the boatmen then had a fight, and the police tried to arrest the boatmen and they had to hide. The boatmen eventually killed the policeman as they were faced with livelihood difficulties. The 16 boatmen were arrested and sentenced to life imprisonment without any legal protection.

Research participants also reported instances of extortion by police and blackmail by private individuals. According to some respondents, police extorted payments from those engaged in sale of illegal lotteries and illegal alcohol production. One respondent alleged the following pattern of abuse of authority and corruption:

Gambling, such as two and three digit lotteries, is the lifeline of the police. Two digit lottery distributors have to pay Ks.500 per day; and the three digit lottery distributors have to pay every 15 days (when the draws are made). The police demand Ks.5,000 to Ks.7,000 per month from illegal alcohol producers. If they fail to pay, they are arrested when the police need to fulfil case quotas. However, they are arrested only when they fail to bribe the police.

In Hlaing Tayar Township, the research team learned about blackmail in relation to land, where individuals deliberately occupied land owned by absentee landlords with the intention of demanding money from the owners when they eventually ask the occupiers to leave. These individuals were allegedly paid between four and five lakhs, as the landlords did not want to be bothered with making legal claims.

#### *(i) Unlawful and Criminal Activities by Non-State Armed Groups*

In Mon State, the activities of NSAGs contribute to a general sense of public insecurity within certain local areas. Local residents explained that members of NSAGs often carried weapons while extorting unlawful taxes, and that they felt threatened even when approached by unarmed members. Some research participants explained:

Members of [a NSAG] came into the village and demanded that people support their livelihoods. They also told the villagers to tell them if they did not want to. No one wanted to give them [money] but no one dared to express that.

Some research participants also explained that NSAGs have recently, following reaching of ceasefire agreements, ventured into areas which were formerly identified as white areas and have begun demanding money from rubber producers. One respondent elaborated that NSAG members asked for Ks.5,000 a year from one plantation and for Ks.5 per tree during the rubber producing season. In one particular instance, members of a NSAG burned the homes of those who could not pay:

Some members of a NSAG demanded money from the workers of a government rubber plantation. When the workers could not pay, they were asked to move from their homes and the houses were set on fire. But the people were not harmed.

(ii) *Narcotics*

Drug-related concerns were reported by some respondents, especially those from research sites in Mon State. One respondent described an occasion when the police arrested three drug dealers:

Recently, two drug dealers were arrested in the ward. One was caught with a gun and a cigarette box filled with tablets. The other two were a couple selling many drugs in a different ward. One of the police officers was involved in a road accident when chasing them down.

Local residents reported that youth, in particular, were using what is locally termed *hsei bya* (ဆေးပြား; tablets), and others were using *bein za ywe* (ဘိန်းတရွတ်; leaves of *bein za* plant) originally brought over from Thailand. One MP to the Mon State Parliament elaborated on some of the challenges associated with apprehending those involved in the sale of drugs and also described some of the social and health concerns related to drug-use:

There are more drug cases here in Mon State. ... Parents of drug users say to arrest their children. The police pointed out a house to me where drugs are sold, and I asked why the people are not arrested if the police know that. The police replied that they could not arrest them as those people are affiliated with a certain organization, and that those who had been arrested previously had been caught in possession of guns.

These days, the youths who help out on social occasions such as weddings and religious donation ceremonies ask to be given tablets called *myin hsei* (မြင်းဆေး) instead of drinks (alcohol).

There is also another type of narcotic called *bein za ywe*, which was first used by those working in the rubber plantations in Thailand. They used it together with betel leaves while working in the plantation to keep awake, and it does not really affect their health. Those who came back from over there brought the leaves back with them and started to cultivate the plants here [in Mon State]. Now people are making drugs using those leaves and mixing it with powder from fluorescent light bulbs, ashes from burnt mosquito coils and cough medicine. They sell the mixture at Ks.500 for a small cup, which makes people dizzy when drunk together with cola.

Some respondents alleged that the police are not able to take effective action because of the backing of drug dealers by influential armed organizations. One research participant stated that for its part, the Mon State Parliament is considering listing *bein za ywe* as an illegal narcotic substance.

## E. SUMMARIZING COMMENTARY

The common thread linking all four areas of justice concern is the aspiration by individuals and communities for equal protection and enjoyment of the law, and for fair and equitable treatment.

Two other points merit emphasis: First, justice concerns in relation to land and discrimination highlight the role that some public officials – notably those from the GAD, SLRD and Immigration Department – have in making quasi-judicial decisions. Such administrative decision-making authority is not subject to any independent review, yet affected citizens have reasonable expectations of public officials' impartiality. Further exploration of this issue is beyond the scope of this research, but deserves priority attention as public administration is often the first point of contact between citizens and the State in addressing local justice issues.

Second, and with respect to issues of public insecurity and legal protection of women and children, the police, in addition to being feared and distrusted, are gradually being perceived as weak, ineffective, indifferent and incapable of protecting those who most require its services.

## **IV. FINDINGS: JUSTICE-SEEKING BEHAVIOUR**

Following on from Chapter III above, this chapter describes the ways in which local residents from the research areas seek justice in response to their concerns. It begins by describing four evolving patterns of authority and justice-seeking behaviour (section IV.A), and then goes on to explore in some detail the emerging roles of Members of Parliament and political parties (section IV.B).

### **A. PATTERNS OF AUTHORITY AND JUSTICE-SEEKING BEHAVIOUR**

As a general matter across the eight townships that the research team visited, the large majority of disputes of any kind are settled at the ward or village level. This typically involves – through the facilitation of local administrators and at times with the assistance and advice of traditional elders – a combination of negotiation, mediation, compensation and/or signing of guarantees of non-repetition (ခံဝန်: *khan wun*) by the offending party. Few citizens in reality have had any direct involvement with State justice and security institutions, towards which most feel fear and distrust. Such avoidance of the police and the courts, and the general inclination towards settling disputes at the local level is captured by the common saying: ‘to make big problems small, and to make small problems go away’ (ကြီးတဲ့အမှုကိုငယ်စေ၊ ငယ်တဲ့အမှုကိုပျောက်စေ: *gyi deq ah hmu go nge ze, nge deq ah hmu go pyauk seh*). This general preference for dispute settlement within the community brings to the fore the role of Ward and Village Tract Administrators for local residents in their day-to-day interactions with the State.

In this regard, the 2012 elections for local Ward and Village Tract Administrators have been significant. Where the elections were conducted in a way that led to local residents’ preferred candidates becoming office bearers, and where the elected officials have performed according to the expectations of the community, this has served as critical validation of State authority. Variations to this general perception are explored below.

A related development alongside the 2012 local elections was the appointment of Management Committees, Development Affairs Committees and Development Supporting Committees at various levels.<sup>49</sup> Specifically in relation to the Development Supporting Committees at ward/village tract and townships levels where traditional elders within the community have been absorbed into new government structures, this has led to a perceived decrease in the influence of the role of the traditional elders in over half of the areas that the research team visited (13 out of 24 wards/villages). It is too early at this stage to anticipate what impact this change might have on local level governance structures.

The combined effect of both the local elections and the appointment of various committees is a general perception that local administrators’ formal, prescribed authority has increased, and their potential for exercising arbitrary power diminished. The net effect is that this is seen as a

---

<sup>49</sup> President’s Office, *Assignment of duties for formation of township and ward/ village tract development support committee* (Notification No. 27/2013), 26 February 2013.



decrease in the overall authority of local administrators, leading to less fear and greater trust and respect for the institution.

A second general point to underscore at the outset is that justice concerns frequently remain unexpressed, and are oftentimes unrecognized, where they involve vulnerable and minority groups. This is especially so with regard to sexual and gender based violence. In the areas where they exist, civil society actors are beginning to play an important role in highlighting the issue of sexual violence, particularly where child victims are involved, and in facilitating claims through the formal justice system.

This emerging role of civil society actors, as well as that of political actors in relation to justice concerns that have a broader communal impact such as land-related issues, will be explored below. One of the more significant dimensions of the findings relate to how State authorities interact with and accommodate these emerging social and political forces.

A third point worth noting, and that cuts across the four patterns below, relates to the role of non-State armed groups (NSAGs), to the extent that they are perceived by local residents as a means of settling certain types of disputes. In the few locations (of Mon State) where they make their presence felt, personal connections with members of a particular NSAG were utilized on one occasion to demand repayment of outstanding loans, and on another to assist in looking for a child who had allegedly been taken away by her teacher. Whilst it is not possible, on the basis of the findings, to discern any broader role of NSAGs as justice pathways, what may be observed is the disposition of those with personal connections to power, even if in the form of arms, to access such networks.

It is important to note that the four patterns discussed below are continuously evolving, as State authorities adapt to new dynamics during this period of transition. The four patterns also do not represent any fixed categories of justice pathways for local residents; rather, they appear as currents, with different patterns cresting at different times, depending on new and changing dynamics as they appear and evolve. What this means, in other words, is that any given ward or village will have aspects of all four patterns. The identification of areas within each pattern is primarily to highlight the relative importance of State, civil society, and religious institutions.

#### *(i) Pattern One: Justice-Seeking through the State*

In this first set of locations encompassing nine out of the 24 areas that the research team visited, local residents rely almost entirely on State authorities and institutions in response to justice concerns faced, rarely resorting to any other third party for intervention or assistance. In this section, the ruling party (but not Members of Parliament who are affiliated to it) is equated with State authority. Civic and/or (opposition) political party activity is either non-existent or very limited in the wards and villages within this pattern. With the exception of one case, the research team did not learn of any major land issues or disputes occurring in these areas.

These nine locations can be further categorized into two sub-sets: The first sub-set ('P1(A)') includes five wards/villages in which local administrators were not popularly chosen by their constituencies and/or areas in which the ruling party exerts a strong influence. Local residents explained that the Union Solidarity and Development Party's (USDP) influence is manifested through infrastructure development (road building), provision of credit facility to farmers, as well as alleged interference in elections of local administrators. The locations within this sub-

set are generally more remote and rural, and are primarily economically dependent on agriculture.

The second sub-set ('P1(B)') comprises four areas that, though not necessarily remote, may be categorized as peri-urban in nature. While there is some level of economic activity within the locations of this sub-set, it is not of a high nor dynamic level. The ward and village administrators within these areas were all elected by their constituencies, and they are generally able to satisfy the needs of their local communities, such as by dealing with petty crime and street fights; settling disputes between husbands and wives, between neighbours, between natives and migrants to an area; settling inheritance disputes; mediating cases of human trafficking; representing the interests of squatters to the authorities; appearing before court as a witness in a murder case; and contributing to local infrastructure development. There is an overall good relationship between the local residents and their chosen administrators.

Some of the more serious criminal cases from wards and villages within this pattern that the research team learned about and that were addressed directly by State justice institutions included homicide, drug use and possession, attempted arrest of suspect without warrant leading to death of police officer, and traffic accidents (including resulting in death). There were also other relatively more minor cases, particularly from locations in P1(A), which were resolved through the criminal justice system. These involved cases of theft (see: Box 14), verbal assault and causing public disturbance.

**Box 14:**

Early one morning, one of my cows was stolen. Five days later, another one was stolen. I heard through word of mouth that another man in a nearby village had also suffered the same loss. So we cooperated to find this thief. When we eventually caught him, we called the police.

After the police opened a case and took the cows as evidence, they asked us for one lakh for each cow. It had already cost about 1.5 lakh to find the thief with our own resources. The police told us things like: "We cannot release the cows. We need to go through the chief of the police post and the chief of the township station." and kept stalling until we gave them the money. They asked Ks.50,000 from one, and then Ks.30,000 from the other person. This is how corrupt the police are these days. This is why I did not go to them in the first place. I tried to rely on my own abilities. So in the end, they only returned my cows to me when I paid the money.

Before that, the judge also went through the process to check if the cows really belonged to me. It took about 11 days in court. The thief was sentenced to 1.5 years imprisonment. It took me three months to search for him. The person who bought my cows from the thief was not involved in the case because he made a deal with the police. All in all, it cost me more than two lakh, and I also missed work.

*(ii) Pattern Two: Emerging Civic, Social and Political Leadership*

The second pattern, which encompasses 10 out of the 24 areas, tends to contain significant demographic, cultural and socio-economic diversity, particularly in the urban wards. This pattern is characterized by the emerging role of social, civic and political organizations. These relatively new forces do not necessarily displace the authority of State structures, but are serving as alternate or complementary pathways to justice. Within these locations, civil society

organizations are playing important roles in facilitating claims and advocating for the interests of individuals and communities. This is especially so with respect to child protection concerns involving trafficking and sexual violence (see, for example, Box 15).

**Box 15:**

[In August 2013], a 28-year-old man tried to rape his 10-year-old step-daughter when his wife was not at home. The neighbours caught him in action under the mosquito net in bed and informed the child protection team in the area.

The child protection organization and local administrator initiated a case against the step-father at the Township Police Station, but the mother denied the incident and claimed that her husband was not the type of person who would sexually assault her daughter. The police did not file a case after confirming the relationship between the child and the mother.

A member of the child protection organization then approached another community-based organization (CBO) for assistance. Having heard what had happened, a member of the second organization arranged for the child to undergo a medical examination, and other members tried to reason with the child's mother. One member of the CBO explained:

The mother could not only care for her daughter because she was afraid that her husband will not give her any money needed for food.

The mother eventually understood the situation, and became a plaintiff in the case. The child protection organization helped pay all the costs associated with the case. The case was transferred to the District Court, and the step-father was sentenced to 20 years' imprisonment. Another member of the CBO elaborated:

We had to go to court about 10 times. I think this is justice.

Political parties play a similar role in relation to land issues, where they advocate on behalf of, and facilitate claims by, affected farmers whose lands were previously arbitrarily confiscated and affected communities who perceive communal land to be encroached upon. In one example, a political party negotiated a monetary settlement between the parties to the dispute. In another instance, the political party acted as a bridge between farmers impacted by land confiscation and State authorities, resulting in the farmers' rights to their land being upheld. In other examples, political parties also accessed their connections with the State/Region and Union Parliaments as a means of addressing the grievances of affected groups, as well as act as a check on government.

In all 10 locations within this pattern, local residents were able to choose whom they wanted as their local administrator, and a qualitative distinction may be made between some of the areas with regard to the general performance of the local administrators. In about two-thirds of the areas (six out of 10) within this pattern ('P2(A)'), local residents reported that their ward and village tract administrators are popular, well-liked and trusted by the community. Given the nature of some of the priority concerns within the local area, such as land disputes and construction of waterways for development, local administrators have in effect had to cooperate with other actors to address the concerns of the community. Such cooperation and collaboration has in turn enhanced the roles and positions of the local administrators. One monk from an area in this sub-set commented positively on the role of emerging civic, social and political leadership:

With the involvement of civil society organizations, law and justice are coming to life.

In the remaining third of wards and villages within this pattern ('P2(B)'), the 2012 local elections did not produce the effective and competent administrators that local residents had hoped for. The perception is therefore that the ward and village administrators are less trusted and relied upon, leading to greater opportunities for other emerging social, civic and political leadership.

*(iii) Pattern Three: Justice-Seeking through Religious Authority*

In this third pattern, religious authorities, in addition to State structures and emerging social and political leadership, play an important role in addressing justice concerns. The areas within this pattern have significant Muslim populations, particularly in villages outside of urban centres where they constitute a large majority of the village populace.

One Muslim research participant explained that there are two distinct schools with respect to religious practices: The first is the Islamic Council, which is perceived as being more assimilated into Myanmar's cultural context and as being more open and flexible in relation to religious principles; and the second is the Ulama, which is perceived as being stricter, such as by encouraging its adherents to keep beards and wear long robes.

Islamic leaders exercise authority over personal, family and religious matters. A representative from the Women's Affairs Federation in one of these areas explained, for example, that couples are married by religious authorities, and that it is "only those people who chose to elope who chose the path of signing papers at an office." This authority generally includes jurisdiction over divorce of Muslim couples, although this is not always the case (see: Box 16).

**Box 16:**

In one area, a woman was discovered by her husband to be having an extra-marital relationship with another man who worked for the family.

One night, the husband beat the wife and tried to suffocate her with a pillow. She became very afraid and told her parents and neighbours about the incident. She later also informed the local administrator, who called the couple to his office and inquired about what had happened. The local administrator gave a recommendation that the couple approach their religious leader (Mawlawi) for a divorce according to Islamic religion and practices.

When the case was reported to the Mawlawi, he advised that the couple not get divorced immediately and that they wait three months to see if it was possible to not break up the marriage. If the couple wanted a divorce after the three months, the religious leader would grant it.

The woman continued to fear for her life, and reported the incident to the local administrator at her natal home. This local administrator gave a recommendation for divorce at the Township Court, and the divorce was granted.

With respect to secular matters, a distinction may be discerned in relation to wards and villages that are generally located within urban townships, and those that are located within more inaccessible and rural townships. Muslim residents in the latter category tend to approach their own leaders (i.e. other Muslims), including ten- and hundred-household leaders, for assistance in secular matters, such as registration of guests, issuance of family registration lists, and appearance as witnesses in court cases; whereas Muslim residents in

wards and villages located in urban townships approach local administrators and political parties.

#### *(iv) Pattern Four: Self-Reliance*

The fourth pattern includes a very small number of urban wards where the research team learned primarily about issues relating to private land-related disputes and loans and debt. Local residents in these areas tend to solve problems on their own, and resort to State authorities as little as possible.

## **B. THE ROLE OF MPs AND POLITICAL PARTIES**

As part of the mapping exercise, the research team met with Members of Parliament (MPs) and political party representatives to seek to understand how they perceived their own roles with regard to addressing the justice concerns of their constituencies. This section focuses on the roles of these two categories of actors, and serves as an elaboration of the findings in Pattern Two from section IV.A above.

At a general level, both political party representatives and MPs described themselves as recipients of a wide range of public concerns – including land conflict, petitions for socio-economic infrastructure development, drug abuse, and complaints of corruption by local authorities – as well as complaints affecting more specific, and at times personal, interests (business concerns, individual protection of women and children, debt, divorce and inheritance disputes). Following receipt of complaints and hearing of people’s problems, MPs and political party representatives described addressing these concerns primarily by acting as bridges between disputing parties, or as connectors to government agencies or other sources of assistance. This bridging and connecting role typically involves a range of activities pursued by both MPs and political party actors, including: (i) offering advice; (ii) communicating with government agencies and officials; (iii) linking affected persons to resources; and (iv) mediation.

In their institutional role as Parliamentarians, however, MPs have available to them an additional avenue through which they are able to address their constituencies’ priority concerns. Political parties, on the other hand, have greater freedom and resources in implementing projects that they consider necessary or important for their own constituencies.

The first sub-section below elaborates on the different ways in which both political party representatives and MPs seek to address the concerns expressed to them. The second sub-section explores the respective institutional roles of political parties and of MPs in Parliament, and then goes on to report on perspectives of political party actors and MPs in regard to their affiliations with political parties.

#### *(i) Connecting and Bridging*

Most political parties that are active in an area have township offices or branches, sometimes with representation extending down to the village level. Party members are native to the local area, and are known by the community. Those wanting to seek help from the parties or their representatives are therefore able to approach them directly. By extension, citizens wanting to

be in touch with their Member of Parliament for the local area also sometimes approach the political party that the MP is affiliated with. At other times, MPs receive complaint letters, or are introduced to those seeking help through a mutual connection.

As part of attempts at addressing people's concerns, political party actors and MPs provide advice, including in relation to legal and administrative procedures, to those who come to them with complaints about their needs and problems. A key component of such advice involves teaching people about writing official complaint letters, about who and where the letters should be addressed, and about the types of evidence to be compiled as part of making a claim. In the event that people are not able to draft their own letters, MPs themselves or their party staff assist with the writing. Once the letters have been drafted and the signatures of all affected parties procured, MPs and political party actors then submit them to the relevant government departments and/or parliamentary committees, or employ them as a basis for asking questions in Parliament.

Besides submitting complaint letters, political party representatives and MPs also communicate directly with government agencies and parliamentary committees such as the Parliamentary Land Confiscation Investigation Committee and the National Human Rights Commission as part of facilitating people's claims, especially where those affected lack confidence in directly accessing the government. In other instances, MPs and political actors approached the police and administrative officers on behalf of affected people to demand appropriate government action and service, including initiating a criminal case for assault (see: Box 17), maintaining farmland spillways, upgrading schools, demanding clean water, constructing or repairing roads, and reclaiming confiscated land. A political party representative who was involved in helping reclaim silted lands confiscated by various actors in one area explained as follows:

Silted lands emerged near the sea. The chief of police at the township, the armed group, and the army took the lands. They then sold the land to businessmen and the villagers were not entitled to it. We met with the township General Administration Department (GAD) directly and investigated the case. We submitted the complaint letter to the State government when the township GAD did not take action. Finally, the Township Administrator investigated the issue and they removed the Village Tract Administrator who was helping them sell the land.

**Box 17:**

The company's representatives assaulted farmers who were protesting against the company taking their farmland as it was licensed to clear silted land along the river. Having been assaulted, the farmers complained to the township police, which refused to initiate a case. When they complained to the district police, the police chief there replied that they were not available to take any action as they were occupied with issues relating to squatters. The farmers then requested help from the political party, which met with both township and district police officers, and only then did the police allow the farmers to initiate a case and arrested four people from the company, including the manager who had ordered the attack against the farmers.

A third way by which MPs and political party actors assist in making claims is by connecting people to resources, primarily in the form of persons with legal knowledge (such as lawyers). While some refer complainants directly to lawyers, others consult first with resource persons before reverting with advice to those seeking assistance. In one instance, an MP described having meetings with a "legal aid group" every weekend to deal with the cases that come to

them. The cases include issues relating to tenancy, inheritance, divorce, industrial relations, assault, murder, licensing of trishaws, and general real estate transactions. Following such meetings, the MP then sits together with those who are asking for help to explain the options that are available, including referral of cases to lawyers for making legal claims. In another instance, a different MP spoke of requesting help from the police and judges:

People who have cases at the police station or courts also come to me. I then request help from my lawyer friends. Someone, I even call police officers or judges on the phone and seek their advice.

In one other example, a political party actor detailed how a connection was made to an individual who contributed financial resources:

The school principal is the brother of a political party actor at the township level, and the principal said that the school required physical infrastructure. The political party members met U Zaw Zaw (of Max Myanmar) at the office opening ceremony of [an NSAG], and they talked about the needs that were put forward by the school principal. U Zaw Zaw eventually donated 400 lakhs for the school infrastructure.

A fourth important role played by both MPs and political party representatives is as mediators. During the mapping exercise, the research team learned about political actors interceding and negotiating between parties to a dispute with respect to industrial relations, real estate transactions, land disputes involving farmers and businesses (see: Box 18), as well as taxation of gold miners. The MP who was involved in mediating between disputing employees and employers described the experience as follows:

One day, about 600 workers from factories in Hlaing Tayar were protesting at the junction in Mayangone. The traffic was badly blocked. I went there as the workers reported the protest to me. The representatives from the companies did not show up. Finally, I had to step in and spoke to the protestors and asked them to go back and said that we would negotiate with the employers. Additionally, the party (that the MP was affiliated with) hired two buses to take the workers back. ... We then had to be involved in negotiating between the companies and the workers. The workers do not trust the industrial relations dispute settlement body,<sup>50</sup> as they felt that the body did not represent the workers and that it was biased towards the employers. The companies also did not like us MPs negotiating. But we had to do it anyway.

**Box 18:**

A group of farmers were utilizing farmlands formally owned by business companies. The land had been confiscated during the period of the military government for development of an industrial zone, and entitlements were given to businesses that had applied for it. The companies left the land unutilized for years and the farmers reoccupied the land. When the company wanted to use the land, the farmers were forced to move, and protested against the company.

The farmers reported the case to an MP, who had to communicate with the company, and who said to the company that several million Kyats was insignificant from the perspective of the company as it was worth paying some money to save time. On the other hand, the MP also met with the farmers and advised them to accept some amount of money offered by

<sup>50</sup> The body comprises the Township Administrator as chairperson, labour office as secretary, and three members of the labour union.

the company, for if they continued protesting, it was uncertain if the land would be returned to them or if they would obtain compensation if the government intervened. Finally, both sides came to an agreement, with the farmers obtaining some compensation and retreating from the land.

One MP who is a member of the Parliamentary Minerals and Natural Resources Committee also shared his experience as follows:

The Committee was formed with 15 members. The Committee is in fact a mini parliament, and is authorized to investigate any person or organization though it is not able to make judgments. We recently had to make inquiries of the Ministry of Mining regarding taxation of gold miners. What had happened was that some private gold miners had been warned to pay outstanding taxes, and they complained to the Committee that the taxation was being carried out in a double standard manner as some had to pay more than others. It seemed that the taxes were collected based on 2012 or 2013 [requirements]. The case came to the Committee and the Speaker of the Amyotha Hluttaw called the Directors General of the Ministry of Mining. A meeting was then held with the participation of all stakeholders: the complainants, the DGs from the Ministry, and the Committee members had a roundtable at the Hluttaw, and the problems were finally settled.

#### *(ii) Institutional Roles of Parliamentarians and Political Parties*

Further to the four activities detailed above, MPs have available to them an additional institutional avenue for addressing the concerns of their constituencies. During parliamentary sessions, MPs have the opportunity to ask questions of relevant government ministries and departments as a means of voicing the concerns of their constituencies and claiming governmental response and service. In one example, an MP raised questions at the Pyithu Hluttaw about access to clean drinking water for his constituency and obtained a written reply from the Mayor of Yangon City assuring that that the issue would be taken care of by the municipal authorities. In another example, one MP described asking questions of the Ministry of Agriculture and Irrigation at the Pyithu Hluttaw in relation to the maintenance and repair of a dike (see: Box 19).

#### **Box 19:**

A dike in the township had been over stilted and was unable to absorb the spills from surrounding farmland for many years. It had been manually repaired every year since the socialist era, but the repairs were never good enough.

A party campaigner in one of the villagers that experienced continuous floods reported the issue to a Pyithu Hluttaw MP. The MP told the campaigner to write a letter and to gather the signatures of all the affected farmers. The MP then asked questions at the Pyithu Hluttaw in 2012, and the Deputy Minister of Agriculture and Irrigation answered that the matter would be resolved in coordination with the State Agriculture and Irrigation Department.

The Speaker of the Pyithu Hluttaw then questioned the Deputy Minister how many acres of farmland were affected by the floods, and the Deputy Minister replied that more than 3,000 acres were impacted. The Speaker then suggested that the issue be dealt with as soon as possible with the strong support of the Union Ministry of Agriculture and Irrigation as the State Departments did not have sufficient technical and financial capacity. The Speaker



continued to ask the Parliamentary Agriculture and Livestock Improvement Committee to follow up on the issue.

After that, the Ministry provided 650 lakhs for the repair of the 35,000-long dike. The improvements started in the 2013-2014 financial year, and are expected to finish this year.

Few MPs also play what may be described as a policy-making role, although this was relatively rare when compared to the other activities of MPs that the research team learned about. In one example, the MP belonging to the Parliamentary Public Finance Committee described tabling bills in relation to the standardization of measurements within the country. In another instance, an MP proposed listing *bein za ywe* as an illegal narcotic substance in the Mon State Parliament to deal with what is perceived to be a significant drug problem in Mon State. In another example, one MP made a proposal for upgrading district hospitals and town planning nation-wide.

Members of Parliament also explained that they took the opportunity of being in Parliament to personally submit complaint letters to parliamentary committees such as the Parliamentary Land Confiscation Investigation Committee. This personal submission is seen as significant. One MP to the Pyithu Hluttaw stated:

People first put forward the issues to me. I then asked them to write a formal letter and to gather evidence. Then I submitted it to the Land Committee headed by U Tin Htut. Now I heard that the lands confiscated by two regiments have been returned to the people.

During the mapping exercise, the research team learned very little about the institutional role of political parties, particularly with respect to party programs or policies. To an extent, this is unsurprising given that political parties have only had a very limited existence in Myanmar. In the areas that the mapping exercise was carried out, some representatives from the three largest political parties did, however, describe a few activities that are undertaken by the parties as institutions.

In a few areas, the research team learned that the Union Solidarity and Development Party (USDP) is providing humanitarian aid (in the form of eye surgeries) and contributing to community infrastructure development by providing cement. In one township, a USDP MP explained that bags of cement would be donated for road construction, building of a Buddhist religious ceremonial structure, erection of a primary school building, and construction of school toilets.

One representative from the National Unity Party (NUP) described establishing a motorcycle taxi project, which the research team observed, whereby groups of 100 youth are organized in townships in Mon State “for the image of the Party and to create jobs.” These youth have driver’s licenses, are registered at the Township Labour Offices, and are certified by both the police and the General Administration Department.

For its part, the National League for Democracy (NLD) has set up a Legal Supportive Committee within its party structure to provide legal aid. The Committee exists at township, State/Region and Union levels. A party member elaborated:

We scan those who request help. We give advice to those with financial needs and who did the right (i.e. ethically right) thing. We would also like to provide knowledge

to those who are wrong (i.e. both ethically and legally wrong) but we are not yet able to.

According to some MPs and political party representatives, it is easier for them to work in their individual capacities, than to be formally affiliated with their political parties. An NUP representative commented:

To participate in the development of the community, we are working as individuals rather than as party members. People might be reluctant to cooperate because of the parties, so we do not cooperate under the party banner.

A USDP MP similarly elaborated:

We are solving problems as MPs. Things can sometimes become more complicated when the Party tries to solve certain problems as an institution, particularly land issues, and there could be a misperception that the Party is intervening with its power. ... As a result, even when complaints are directly addressed to the Party, party leaders instruct MPs of the concern constituencies to deal with the case.

### C. SUMMARIZING COMMENTARY

Three important points emerge from the findings reported in this chapter: First, variations in Patterns One and Two with respect to how local residents seek help in response to justice concerns faced suggest nascent indications of democratization. Further follow-up questions, such as to what extent are such indications representative, to what degree are local residents really able to hold their elected officials accountable (either through the electoral cycle or through the legal process (by using administrative law and/or the Supreme Court's writ jurisdiction)<sup>51</sup>), and how are these newly elected officials interacting with their appointed colleagues in the General Administration Department at the township level, cannot be answered on the basis of these findings, and are areas for continuing research and further observation.

Second, the emergence of civil and political organizations is playing an important role in facilitating claims and in advocating for the interests of individuals and communities, particularly with respect to land-related issues and sexual violence against children. Whether or not and to what extent this role extends more broadly to other areas, such as sexual violence against women, is a question that merits further monitoring and evaluation.

Third, the personal element is a ubiquitous and underlying feature of dispute settlement in the areas where the mapping exercise was carried out. Access to persons in positions of authority, or to those with personal connections to others in positions of influence, whether in the form of political party representative, MP or NSAG member, is a common tendency among those seeking settlement of any dispute.

---

<sup>51</sup> Constitution of the Union of Myanmar (2008), Art. 296

## **V. REFLECTIONS AND RECOMMENDATIONS**

It is undisputed that the rule of law is necessary for peace, development and democracy in Myanmar. What ‘the rule of law’ means in the Myanmar context and how it can be achieved particularly during this transition period is, however, contested.

The first section (section V.A) in this chapter offers some reflections on the findings from earlier chapters of the report, and considers various implications for efforts aimed at strengthening rule of law and access to justice in Myanmar. The second and last section (section V.B) concludes with recommendations.

### **A. REFLECTIONS**

Taken together, the findings in the previous three chapters generally converge around two broad interrelated themes: the first with respect to how power and authority are generally conceived; and the second in relation to norms that govern wider societal relationships. Traditional notions of the state, of leadership, of the relationship between those who govern and those who are governed, and of the broader connections between individuals within a community, are all very much alive and continue to have a profound impact on developments in Myanmar today. As emphasized by respected Myanmar scholar, David Steinberg, “History matters, and culture is important. They are not residual categories of analysis ... but are central to understanding societies.”<sup>52</sup>

It is also important to appreciate that while the analysis that follows suggests certain inclinations on the one hand, such tendencies are neither deterministic nor unchanging, not least because individuals and organizations within society are constantly negotiating and reinterpreting relationships within and beyond their communities. Section V.B below suggests providing support to some of these initiatives in the service of local and national visions of justice and equality.

A separate point to note is that the following reflections are not intended in any way to justify a Myanmar exceptionalism. Although every country and society has its own particular history, there are also broader currents that shape and influence the whole of humanity. The aim here is simply to highlight two interrelated themes, as they emerged from the mapping findings, and to provide a longer historical perspective that may be helpful in thinking about strategies for rule of law and access to justice programming. From a broader regional outlook, the two themes presented below link Myanmar to longstanding debates over forms of democracy, governance and human rights in Asia, all of which are pertinent considerations as part of a national dialogue process.

#### ***(i) Conceptions of Power and Authority***

During the monarchic, pre-colonial period, the King was recognized as “the embodiment of the highest attainment on earth ... earned through merits accumulated in the numberless cycles of

---

<sup>52</sup> Steinberg, *Burma/Myanmar – What everyone needs to know* (2010), p. 149

existence in the past”<sup>53</sup>. The legitimacy to rule therefore depended not on the present, but on the past, and on the inherent material and spiritual qualities of the ruler, rather than on any extrinsic validation. The effect of such “cosmological legitimation of authority” resulted in a highly personalized loyalty to the person of the King, though not necessarily to the political concept of monarchy.<sup>54</sup>

Within such a worldview, “[t]he well-being of king and people are interwoven as the people take part in the virtuousness of the ruler. ... [A]n opposition must cooperate with the ruler, but not compete for power.”<sup>55</sup> Any “[o]pposition to the established government was synonymous with rebellion”, a defiance of the King’s authority, and a disruption of the unity of the state.<sup>56</sup> In this way, harmony was identified with unanimity, and it was inconceivable that harmony could be achieved through the regulation of dissonance.<sup>57</sup> The King’s authority as monarch, though absolute and undifferentiated, was therefore conceived of as finite, with any delegation or devolution seen as leading to a loss in power.

Such conception of the personalized and finite nature of power and authority means that “[a]ny alternative centre of power is viewed as a new, potentially destabilizing influence in the zero-sum game and is considered with suspicion.”<sup>58</sup> Some historians suggest that these tendencies have profound implications within a context where decades of military rule – through the Security and Administration Committees (1962 to 1974),<sup>59</sup> the Burma Socialist Programme Party (1962 to 1988),<sup>60</sup> Law and Order Restoration Councils (1988 to 1997), and Peace and Development Councils (1997 to 2010)<sup>61</sup> – have enhanced such authoritarian inclinations, as captured by the findings in relation to linkages with the past in Chapter II above.

While difficult to pin down with any precision, observers suggest that this historical political culture should not be ignored in gauging the challenge of introducing institutional pluralism and the democratic separation of powers. This historical context permits a deeper understanding, for example, of findings presented in Chapter II regarding the continuing perception by research participants of a command and control form of governance. The Judiciary is the most important institution in this respect, as its task is to constitutionally hold

---

<sup>53</sup> Maung Maung Gyi, *Burmese Political Values: The socio-political roots of authoritarianism* (1983), p. 14

<sup>54</sup> Engelkamp, *Moral Authority in Burmese Politics* 109 *ASIEN* (October 2008), p. 42

<sup>55</sup> *ibid.*, p. 44

<sup>56</sup> Maung Maung Gyi, p. 46

<sup>57</sup> *ibid.*

<sup>58</sup> Steinberg, p. 153

<sup>59</sup> Following a military coup and establishment of the Revolutionary Council in 1962, executive authority was vested in a hierarchy of Security and Administration Committees (SACs) that were headed by military officers and controlled by a Security and Administration Council Central Committee at the national level, which in turn answered directly to the Revolutionary Council headed by General Ne Win. When the 1974 Constitution was promulgated, the SACs were replaced with People’s Councils, whose members were elected by popular vote from a Burma Socialist Programme Party-approved list. Although the People’s Councils were in theory responsible for administration at various levels, they exercised little autonomy in reality given the dominant role of military officers. See: Donald Seekins, *Historical Dictionary of Burma (Myanmar)* (2006), pp. 54-55

<sup>60</sup> Between 1962 and 1988, General Ne Win was both party leader and chairman of the Burma Socialist Programme Party, wherein the majority of party leaders were military officials, and which the 1974 Constitution declared it to be “the sole political party ... lead[ing] the State.” See: Seekins, pp. 127-128

<sup>61</sup> Both the Law and Order Restoration Councils and Peace and Development Councils were composed of military officials, and established to direct and implement government functions. See: Seekins, p. 55

the executive and legislature in check, while protecting and upholding the rights of individuals and communities. In this regard, many respondents expressed concern that the Judiciary continues to be deeply compromised by executive interference and corruption, a problem that poses a greater burden on the poor, powerless and marginalized. The issue extends beyond the formal judicial structure to public administration, where matters of fairness and equality are beyond independent appeal yet apparently fraught with complaints, as described in Chapter III.

This historical legacy also poses a challenge to other aspects of the reform process, including decentralization and devolution of political power to State/Region governments, the emergence of an independent media able to question and criticize government decision-making, and the empowerment of civil society organizations that can assist in interpreting and framing public demands and in servicing some of those needs.<sup>62</sup>

There are other aspects of the historical exercise of power that may be relevant for understanding current perceptions and practice. For instance, with the King as the central figure of the cosmological order and the pivot around which the royal government and system of administration revolved, he exercised “a *mandala* system of sovereignty ... in which power radiated from [him] ... in a series of concentric circles to almost indefinite distant regions.”<sup>63</sup> The King’s rule was effected through appointed Governors (ဝန်: *wun*) who swore oaths of loyalty to the crown and Provincial Governors (မြို့ဝန်: *myo wun*) who were central government officials stationed at local towns,<sup>64</sup> all of whom “conceived their duty primarily to keep the king’s peace and carry out the king’s orders.”<sup>65</sup>

Ministers and officials regarded the King as their benefactor, patron and protector.<sup>66</sup> As agents of the King, the status and social positions of ministers and officials were elevated through association with the royal court,<sup>67</sup> thereby contributing to a complex social hierarchy based on personal ties and favours in which authority, power and prestige are seen as being embodied in persons, rather than in the law,<sup>68</sup> and with the King at its apex.

Some observers consider that this legacy of a person-centred social and political structure, which is based on connections and networks, relevant for understanding political reform in Myanmar today. It is instructive for thinking about the challenge of building principled and rule-based institutions, and reorienting a government bureaucracy towards responsive, fair and equitable service delivery.

Myanmar’s current system of governance, in practice, remains top-heavy, reinforced by decades of military command and control structure. It emphasizes persons who are placed in superior positions with attendant unquestioned power and authority. Within such a structure, those who are on the lower rungs of any scale, or on the outer edges of a web of connections, necessarily have to seek access to, or retain the support and favour of, those who are situated at the higher rungs or inner networks of power. The predisposition towards utilizing informal social networks – rather than going through institutional routes – to access individuals in

---

<sup>62</sup> See: Steinberg, p. 153

<sup>63</sup> Steinberg, p. 18

<sup>64</sup> Maung Maung Gyi, pp. 18, 27, 35 & 45

<sup>65</sup> *ibid.*, p. 45

<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*, p. 20

<sup>68</sup> *ibid.*, p. 174

positions of authority and/or influence, and expectation of their dispute settlement prerogative, is captured by the findings in Chapters II and IV, particularly with respect to the emerging, ad hoc role of Members of Parliament (MPs).

At the same time, there is a lack of corresponding checks on those who are positioned to wield power, thereby opening up opportunities for corruption. For instance, while access to MPs are emerging as a new pathway that can be an effective challenge to top-down governance, the ad hoc nature of such interventions can also render it vulnerable to remaining a system of patronage. As described by one research participant, it is those who have power and authority within their own marked out domains that are corrupting the system: *min pin kaung lyeq, min hmyaun hpyeq* (မင်းပင်ကောင်းလျက် မင်းပြောင်ဖျက်; even if the monarch himself is good, it is the small kings who destroy the system). The findings in Chapters II and III above present research participants' perception of corruption as an entrenched and widespread concern, and that in some instances those who are placed in positions of power and authority discriminate against others in vulnerable positions for personal gain. Other respondents spoke also of a general fear in society of having to deal with such a pervasive problem, and the associated challenges of steering government officials towards a responsive, public service orientation.

The reflections presented under this theme relating to how power and authority are conceived in Myanmar is relevant to the longstanding debate about forms of democracy, governance and human rights in Asia. Merely 'thin' rule of law and judicial independence bounded by executive power are likely results if autocratic and authoritarian principles of political rule continue to prevail. Any effort to strengthen rule of law and access to justice will have to be designed with these dynamics clearly in view. In particular, programming will have to anticipate resistance and limits to rights protections, which may be manifest in a merely thin and formalistic notion of the rule of law.

## (ii) *Societal Relationships*

In general, the traditional norms and customs that governed social and economic relationships in pre-colonial Burma functioned "not only to protect the rights of individuals from violation by others, but also to safeguard the interests of society from disruption by individuals", and such practices were "concerned to create harmony among different sections of the people."<sup>69</sup>

This meant that "living on an impersonal conceptual standard was never understood" and that "[q]uestions were never settled in terms of impersonal legal concepts and rules, to which both sides could appeal in case of further disputes or differences of opinion."<sup>70</sup> To this end, the fundamental ethos of dispute settlement was to seek a compromise that would take into consideration satisfying the personal circumstances and demands of the disputing parties.<sup>71</sup> Furthermore, "the solution was brought about by persons known for their high integrity and respectability, who were trusted by the general public."<sup>72</sup>

Such inclination towards negotiation, mediation or some other form of conciliation as the primary means of dispute settlement is captured by the findings in Chapters III and IV above, and may, to some extent, explain why parties who are dissatisfied with court decisions issued against them tend to then seek out other political means of resolving issues.

---

<sup>69</sup> Khin Maung Gyi, *et al.*, *A Vision and A Strategy: Economic Development of Burma* (2000), p. 187

<sup>70</sup> Maung Maung Gyi, p. 47

<sup>71</sup> *ibid.*, p. 48, and Khin Maung Gyi, *et al.*, p. 187

<sup>72</sup> Khin Maung Gyi, *et al.*, p. 187

The personalized and hierarchical political structure of the King's government was mirrored in broader social relations, which meant that the status of a person was always measured against another's. An individual was "never viewed as a neutral member of [...] society possessing rights and privileges as a human being."<sup>73</sup> Rather, "[a] person is a link in the family structure or societal framework and enjoys a status according to his age, sex, generation, and occupation. ... Respect and attention is [thus] regulated according to the social scale."<sup>74</sup> Arguably, ethnicity and religion are two other factors that determine how a person is treated in Myanmar, as demonstrated by the findings reported in Chapters II and III above.

Such ordering of societal relationships – between a superior and a subordinate; between an older person and a younger person; between a wealthy person and another of less economic means; between men and women; etc. – translates into an "absence of equal treatment concept within the society"<sup>75</sup>, and reflects deep-seated socio-cultural norms and values that shape interactions between dominant groups on the one hand, and vulnerable and minority groups on the other. This explains at least in part the justice concerns faced by vulnerable and minority groups that are presented in Chapter III above, and that are unrecognized by large sections of society.

While these traditional societal relationships may retain coherence, and at times legitimacy, particularly in rural areas, they become less tenable as people increasingly interact with a modernizing economy, become more politically aware and involved, and gain greater exposure to different norms and value systems. As the findings suggest, the lack of equal treatment for vulnerable and minority groups has no traditional justification in this context; but rather demands reforms that can guarantee equal treatment before and under the law.

The foregoing is cast as a series of 'reflections' in the same sense that the findings in the earlier chapters are indicative, rather than exhaustive and statistically representative. A full account of local, regional and national is beyond the scope of this mapping research. The findings are sufficient, however, to suggest possible avenues for supporting the ongoing reform efforts, particularly in relation to achieving equality before and under the law.

In this sense, and before moving on to the next section, it is also worth recalling that modern institutions of government and civic society are products of political contestation. They are forged over long periods and within broader social contexts and political economies, which in turn affect the legitimacy, authority and accountability of justice sector institutions. Such political contestation means that the development process is inherently conflict-ridden as rights, responsibilities, and resources are reallocated, and relationships realigned. Any reform process that is part of this development thus anticipates a broadening of the political settlement beyond elite groups to vulnerable and marginalized populations who have equal claims to improving their wellbeing. In this way, the outcomes of such development and reform processes are neither linear nor predetermined, and should not be expected to be so.

Lessons learned from decades of rule of law and justice sector reform initiatives globally have also shown that failure to take into consideration the broader frameworks of political governance and social norms have frustrated even the best laid plans and reform agendas.<sup>76</sup>

---

<sup>73</sup> Maung Maung Gyi, p. 171

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid.*

<sup>76</sup> See, for example: Desai & Woolcock, *The Politics of Rule of Law Systems in Developmental States: 'Political Settlements' as a Basis for Promoting Effective Justice Institutions for Marginalized Groups* (July

The perceptions and experiences of local residents, civil society and political actors elicited throughout the mapping exercise and presented in the earlier chapters of the report equally provide some indication that engaging with history, the political economy, and socio-cultural norms and values of the Myanmar context – at both macro-State and localized-non-State levels – are central to any reform task and change effort.

## B. RECOMMENDATIONS

From the foregoing, the recommendations that follow focus on advancing equality before and under the law in Myanmar during this transition period, and suggest paying attention to a continuum of “interim institutions” that are in a continuous state of change.<sup>77</sup> In other words, rather than raise expectations for a perfect blueprint or model, the recommendations propose a set of information-based strategies,<sup>78</sup> as well as identify related capacities, which are focused on the process where intermediate institutional arrangements may emerge that are able to address problems in a transitional process. They are intended as general guidance, based on the mapping findings, for any specific programmatic aims that may be developed.

### 1. Find “cracks” or opportunities

By focusing on interim institutions, the challenge is to identify opportunities where either formal and/or informal institutions can be engaged with, and encouraged to be involved in transforming the social contexts and political economies in which they exist. The aim is therefore to promote “good struggles” that will lead to more equitable State-society relations, that is, by subjecting the “content, legitimacy, longevity and adaptability ... [of institutions to] scrutiny from a broad cross-section of stakeholders, with all of the compromises, disappointments and ‘messiness’ that this inherently entails.”<sup>79</sup>

Findings from the mapping exercise suggest a few “cracks” that would be worth testing as opportunities for building interim institutions. These include: (i) the nascent indications of democratization at the ward and village tract level as a result of local level elections (as suggested by variations in justice pathways for local residents in response to justice concerns), by empowering local residents to demand accountable governance and encouraging local authorities to provide responsive services; (ii) the increasingly important role played by civil society and political actors in facilitating claims and advocating for the interests of individuals and communities, including through the provision of legal aid; and (iii) the institutional role of parliamentarians.

### 2. Manage conflict

Given that the development process is itself a very likely source of conflict as the status quo – from which political and economic elites may be assumed to benefit – is changed by

---

2012) *ESID Working Paper* No. 8; Desai, Isser & Woolcock, *Rethinking Justice Reform in Fragile and Conflict-Affected States – The Capacity of Development Agencies and Lessons from Liberia and Afghanistan* (2012) *The World Bank Legal Review* Vol. 3; Decker, Sage & Stefanova, *Law or Justice: Building Equitable Legal Institutions* (n.d.)

<sup>77</sup> Adler, Sage & Woolcock, *Interim Institutions and the Development Process: Opening Spaces for Reform in Cambodia and Indonesia* (March 2009) *Brooks World Poverty Institute Working Paper* 86

<sup>78</sup> These strategies are taken and adapted from those identified by Adler, Sage and Woolcock.

<sup>79</sup> Adler, Sage & Woolcock, p. 16



introduction of new resources and imposition of different rules that aim at empowering traditionally vulnerable groups, the ability to manage and address conflict will be key in ensuring the positive impact of any programming. Equally, where disappointment may result as a consequence of raised expectations, managing such expectations will also be crucial. In this regard, it will be important to make available transparent, legitimate and accessible mechanisms that are able to respond to real or potential conflict.

### 3. Adopt equitable 'rules of the game'

As part of focusing on the process with continuously changing interim institutions, it will be important to promote rule-based, transparent and accountable decision-making at every step along the way. Along with improving physical access to justice (such as by reducing geographic distances or financial cost), adopting principles such as independence and transparency of decision-making, effective participation, due process and non-discrimination will allow vulnerable groups to "begin to participate in the process of 'negotiating rights'".<sup>80</sup>

### 4. Harness collective action and diverse viewpoints

Addressing the justice concerns that were expressed by research participants throughout the mapping exercise generally require participation by a range of actors whose interests, resources and expectations are likely to be opposed. Building partnerships – both vertical (upstream to law and policy level, and downstream to affected populations) and horizontal (for example, by looking beyond the legal sphere to the health and education sectors) – will be key in forming coalitions, developing innovative and adaptive strategies, and sustaining momentum for change.

Equally, building collaborative leadership and dialogue skills that will enable issues to be dealt with in a participatory and inclusive manner can encourage all relevant stakeholders to remain engaged in the process, even where some will end up becoming losers. The harnessing of such diverse perspectives will in turn increase the legitimacy of the process.

### 5. Build local research capacity

In order for the above strategies to be maximized, it is crucial that they be applied with a nuanced understanding of local dynamics and realities. Since rules systems, whether formal or informal, are reflections of and responsive to local values, their legitimacy rests on their being indigenous.<sup>81</sup> To this end, building local research capacity is necessary for understanding the perspectives and experiences of justice sector users and for informing policy makers. This will also ultimately empower Myanmar citizens to conduct research on matters that affect public policy-making, and communicate directly with their government.

Findings from the mapping exercise suggest certain targeted areas where a deeper understanding of the issues and local dynamics will be key in developing rule of law and access to justice programming and/or appropriate baselines for monitoring and evaluation. These include concerns relating to loans and indebtedness, disqualification from citizenship, sexual and gender based violence (including affecting children), domestic violence, lack of fairness and independence in quasi-judicial administrative decision-making (particularly in relation to

---

<sup>80</sup> *ibid.*, p. 20

<sup>81</sup> Sage, Menzies & Woolcock, *Taking the Rules of the Game Seriously: Mainstreaming Justice in Development – The World Bank's Justice for the Poor Program* (2009) p.17

land and civil documentation) and the impact of local elections for Ward and Village Tract Administrators as an indication for democratization in Myanmar.

## **ANNEX 1: METHODOLOGICAL COMPARISON WITH UNDP MAPPING**

The main methodological difference between this exercise and the UNDP Mapping is that the UNDP through its formal relationship with the Myanmar Government was able to obtain formal meetings with officials from the Office of the Supreme Court of the Union, the Union Attorney-General's Office, the Myanmar Police Force, and the General Administration Department of the Home Ministry at State/Region, District and Township levels, as well as limited formal meetings with registered civil society organisations. This difference was anticipated at the outset of the mapping exercise, and was not considered to be a significant limitation of the research given that the UNDP Mapping encountered a generally uniform pattern of institutional responses from justice sector actors across six townships in three States and Regions. This mapping exercise was also supplemented, to the extent possible, by meetings with religious leaders, political party representatives and MPs at township and State/Region levels to capture a more diverse range of views and perspectives.

The following table presents in summary form a comparison between the methodologies adopted by the UNDP Mapping and the research conducted by the Myanmar Legal Aid Network (MLAW):

		<b>MLAW MAPPING</b>	<b>UNDP MAPPING</b>
<b>Geographic Coverage</b>		Yangon Region, Mon State (8 townships)	Mandalay Region, Ayeyarwady Region, Shan State (6 townships)
<b>Research Questions</b>	Local communities (Ward/Village level)	<ol style="list-style-type: none"> <li>1. What are the local priority justice concerns?</li> <li>2. How do people address these concerns?</li> <li>3. What are the perceived obstacles to accessing justice?</li> </ol>	
	Public officials (State/Region, District, Township levels)	--	<ol style="list-style-type: none"> <li>1. What kinds of cases and issues are the focus of the institution?</li> <li>2. What are the institutional challenges for carrying out this work, particularly with regard to the national reform process?</li> <li>3. What, if any, are the needs of the institution for addressing these challenges?</li> </ol>
	Civil society actors, etc. (State/Region and Township levels)	<ol style="list-style-type: none"> <li>1. What are the local priority justice concerns from the perspective of the organization / institution?</li> <li>2. How do people address these concerns?</li> <li>3. What is the role of the organization / institution in addressing these concerns?</li> </ol>	
<b>Fieldwork</b>	Local communities	24 wards/villages	18 wards/villages
	Public officials	--	Representatives from the Judiciary, Advocate-General's Office (AGO), Myanmar Police Force (MPF) and General Administration Department (GAD) at State/Region, District and Townships levels
	Civil society actors, etc.	Civil society actors, religious leaders, political party representatives, MPs at Township and State/Region levels	Limited meetings with civil society actors only

# **BETWEEN FEAR AND HOPE**

---

**CHALLENGES AND OPPORTUNITIES FOR  
STRENGTHENING RULE OF LAW &  
ACCESS TO JUSTICE IN MYANMAR**