

# CONSOLIDATED SUMMARY REPORT



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ACCESS TO JUSTICE AND INFORMAL JUSTICE SYSTEMS IN

## KACHIN, RAKHINE AND SHAN STATES

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## ABBREVIATIONS AND ACRONYMS

10 HHH	10-Household Head (leader of a group of 10 households)
CLA	Culture and Literature Association
CrPC	1898 Code of Criminal Procedure
DNK	Do Not Know
FIR	First Information Report
GAD	General Administration Department, Ministry of Home Affairs
IDP	Internally Displaced Person
MPF	Myanmar Police Force
UNDP	United Nations Development Programme
W/VTA	Ward/Village Tract Administrator

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Photo: Manau poles erected on Manau ground in Myitkyina. Every year Kachin clans dance around these poles

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# FOREWORD

In Myanmar, the justice sector is playing an important role in the country's democratic transition. Underlying the work of the courts, the law officers and the police – and most other government agencies that provide some form of justice service – is the recognised need to rebuild and strengthen the trust and confidence that people have in formal systems of governance. People's expectations for fair, equitable and rights-based treatment are clearly rising and progress can in part be measured by how much trust and confidence the Myanmar people have in the formal justice system.

This report, "Access to Justice and Informal Justice Systems in Kachin, Rakhine and Shan States", begins to define what people's expectations are for civil and criminal justice services in Myanmar, and how formal and informal processes are used at the grassroots level when conflicts arise. Its dialogue-interview methodology with individuals, families and groups in informal settings, in IDP camps and in conflict-prone areas of Myanmar allows us to access hard-to-obtain data that can better inform future justice sector development planning. It also allows us to understand the perspectives of people who have little faith that their cases will be dealt with fairly during voluntary or involuntary interactions with the justice system. This low level of trust causes people to rely largely on informal methods of dispute resolution, which can produce equitable results, but whose outcomes do not always align with legal, due process or human rights norms.



To rebuild trust, measurable progress needs to be made by the government to improve the quality and fairness of all actors and agencies involved in the justice sector. Understanding people's perceptions and expectations of the justice system is a necessary early step that Myanmar must fully explore if it wants to develop responsive solutions to the justice needs of all its people, including the most vulnerable and marginalised.

Finally, let me thank all the people in Kachin, Rakhine and Shan who agreed to be interviewed for this report. We hope that this report will help policymakers, development partners, civil society and all other stakeholders in creating a rights-based and capable justice system in Myanmar.

**Peter Batchelor**  
Country Director  
UNDP Myanmar



# EXECUTIVE SUMMARY

Photo: Palaung women from nearby villages selling vegetables at the Myoe Ma Market in Lashio, northern Shan State

Between October 2015 and July 2016, the United Nations Development Programme (UNDP) in Myanmar conducted a study on access to justice and informal justice systems in 16 townships in Rakhine, Kachin and Shan States.<sup>1</sup> The purpose of the study was to cast light on the formal, quasi-judicial/administrative and informal processes of justice, and why and how people use them to resolve their disputes and grievances.

The research sought to answer three main questions:

1. *How do people seek access to justice?*
2. *What are people's perceptions of, and trust and confidence in, the formal justice system?*
3. *What is the range of informal justice processes that exist in the local area, and how do they operate?*

This consolidated report summarises the findings<sup>2</sup> (which are presented in detail in the state reports<sup>3</sup>). It is important to note that the findings are indicative rather than representative, because of the sampling methodology (Annex I), and cannot be generalised to any wider population.<sup>4</sup>

This report highlights the most significant considerations that emerged in terms of ac-

cess to justice and presents recommendations arising from these considerations, with a view to strengthening the consistency and quality of judicial services throughout Myanmar.

The Introduction outlines the conceptual underpinnings of the study, providing a context for the research findings and analysis that follows. It relies on three key concepts fundamental to good governance: (i) the legitimacy of authority; (ii) public trust in the legitimacy and exercise of judicial authority; and (iii) the rule of law, including accountability. Public trust in the legitimacy of the justice system is linked to shared values in society. Those shared values are typically based in human rights, particularly substantive equality, non-discrimination, and the right to equal and just treatment according to due process under the law. Shared values are therefore central to the exercise of access to justice, and inform people's expectations of judicial processes and outcomes. They also imply a common expectation of accountability—that those who hold a public mandate are responsible and answerable to the public for their actions and, simultaneously, the public has a right to hold public officials to account.

Parts I, II and III present and analyse the research findings. Part I first considers respondents' perspectives on certain dimensions of justice. It then examines the nature of the disputes that people had sought to resolve and which types of dispute they considered to be of priority. Their disputes were overwhelm-

1 Annex I outlines the research methodology.

2 In this report, "respondent" is used to refer to any person who participated in the research study, including those who participated in focus groups and interviews. This report generally does not include findings in relation to internally displaced respondents. This group was sampled only in Kachin; see: UNDP Access to Justice and Informal Justice Systems Research, Kachin State. The experiences of internally displaced persons in regard to access to justice warrant dedicated attention and response.

3 UNDP Access to Justice and Informal Justice Systems Research, Rakhine State. UNDP Access to Justice and Informal Justice Systems Research, Kachin State; UNDP Access to Justice and Informal Justice Systems Research, Shan State.

4 Study sites and respondents were purposively selected. The findings describe only the study sample. Statistically relevant comparisons cannot be made among respondents, and the findings cannot be generalised to any wider population. Further research challenges and limitations specific to each state are detailed in the respective state reports.

ingly concerned with four issues: debt, land, civil documentation and abuse of state authority.

This provides some context for examining why and how they sought access to justice (Part II). It appears that they were motivated, at least in part, by their adherence to such values as equality, fairness and accountability. Typically, they perceived themselves to be victims of unfairness, inequality or discriminatory treatment and/or they perceived a lack of accountability by public officials. Most people sought access to justice through informal channels. Perceived discrimination is likely to account for some people's reluctance to seek assistance to resolve their concerns.

The majority did seek resolution of their grievances. They preferred disputes to be settled locally, favoured seeking assistance to obtain resolution, and valued receiving fair treatment above a favourable outcome. Attempts to settle matters locally via direct negotiations or with the assistance of third parties were commonly grounded in cultural and social considerations and, notably, were not often successful. Officials in the formal justice system were rarely involved in efforts to seek resolution of disputes at the local level.<sup>5</sup>

Part III shifts the focus onto the other actors involved in settling disputes and resolving concerns. It examines people's perceptions of key judicial actors and how these perceptions might have influenced their decisions and their access to justice. Many of those who sought access to justice perceived that their concerns would not be heeded in the formal justice system because of differential treatment in Myanmar society that partic-

ularly favours those with wealth, education and connections. This perception can likely be linked to the underreporting of incidents (and, when associated with the persistence of patriarchal norms, particularly incidents of violence against women). The difficulties faced by abused and vulnerable women in accessing justice give rise to significant concerns on their behalf. This situation necessitates government leadership and merits priority action.

With respect to people's perceptions of the formal justice system, their non-recourse to the system for dispute resolution is particularly instructive. It is evident that there are low levels of public trust in those who play key roles in the justice sector. Broadly speaking, people do not think that judges, law officers and the police share their values. People are not confident of receiving non-discriminatory and fair treatment in the justice system, nor are they confident that it will deliver just outcomes. The lowest levels of public confidence are reserved for the police.

In marked contrast, people perceive that community leaders are aligned with community priorities and are invested in the same shared values as "ordinary people". This takes on particular significance given how people preferred to pursue justice and resolve their disputes. Their general preference for settling disputes locally using non-formal mechanisms underscores the relative legitimacy of non-formal pathways to justice. This is despite the fact that some non-formal mechanisms adhere to patriarchal norms, which have significant impact on access to justice for women in particular.

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<sup>5</sup> Annex II describes the key institutions, actors and processes within the criminal justice system as they operate at district, township or lower administrative levels of society. It also discusses the roles that administrators and the General Administration Department (GAD) play in dispute settlement. Annex III describes the roles played by non-state third parties in dispute resolution at the local level.

This report draws overall conclusions from the research findings and proposes related to key recommendations that are aimed at strengthening the rule of law and access to justice in Myanmar. The recommendations focus on the areas in which disputes most commonly occur and people have priority concerns; seek to address the evident deficit of public trust in the formal justice system to resolve such concerns; and seek to ensure that the justice system at all levels functions in accordance with the rule of law, including the principle of public accountability, and reflects shared values based in human rights.



## INTRODUCTION

“For example in a traffic accident ... the ethnic leader tries to solve [the dispute] in their own way by [asking the responsible party to] bear the medical costs, and to give compensation [to the injured party] for days that he [or she] cannot work. We try to get an agreement [between the parties]. ...

Very often, throughout the whole country, there is a saying ‘to make a big case small, and to make a small case go away’. If I stick fast to the law and say that it is not possible to solve matters in this way, I will not be able to build trust with the people. Solving minor and not serious cases in the formal way will waste time and money. Of course, for serious cases, we have to go according to the law.”

– Myanmar Police Force (MPF) officer

Two key concepts – legitimacy and trust – are fundamental to good governance in any society. The results of the historic 2015 general elections demonstrated the centrality of these concepts to the exercise of political authority in Myanmar. They underpin the statement by an officer of the Myanmar Police Force (MPF) reproduced above.

Legitimacy and trust are inherent to the rule of law and critical in the exercise of legal authority through the formal justice system.

Legitimacy promotes compliance with the law, encourages cooperation with actors in the formal justice sector, and has the potential to facilitate community engagement in a way that enhances the social, political and economic development of communities.<sup>6</sup> Public trust in the justice system and its legitimacy promotes trust in other public institutions because it provides some guarantee against possible abuses by other such institutions.<sup>7</sup>

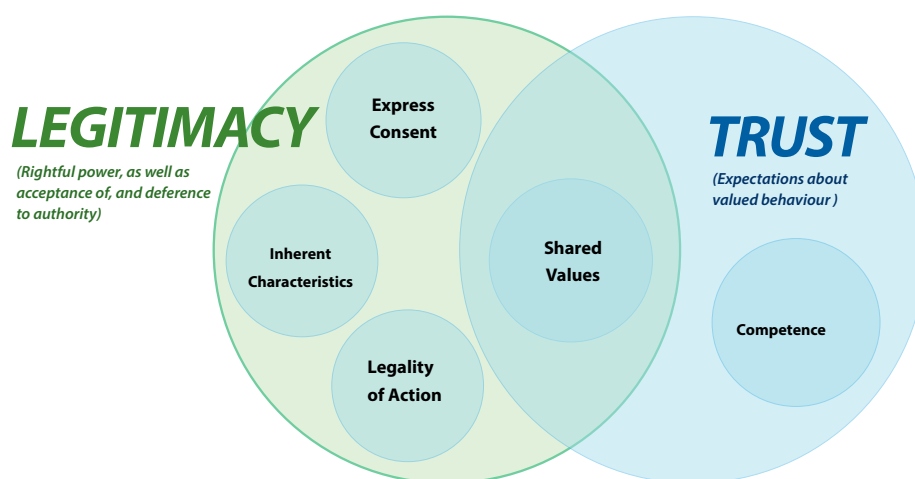
Trust is a function of competence and shared

values. In other words, public trust in the justice system depends on those who play a role in the system having the competence (knowledge, skills and resources) and right intentions to do what the public trusts them to do, that is, to act in ways that the public considers effective, fair and responsive to local needs and priorities.<sup>8</sup> Consequently, when public officials succumb to bribery or to external influence/pressures, or act in discriminatory ways, these behaviours represent a specific set of barriers to trust that inhibit access to justice.

Legitimacy, too, is concerned with shared values. Legitimacy has been defined as including three elements: (i) express consent; (ii) express consent grounded in the authority's conformity to standards of legality; and (iii) shared values, or right intentions.<sup>9</sup> In the Myanmar context, this definition was extended to include: (iv) inherent characteristics of the authority.

Thus, the concepts of legitimacy and trust intersect and overlap in the realm of shared values (Figure 1.1).<sup>10</sup>

Figure 1.1 Legitimacy and Trust



6 Tom Tyler and Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement* (2013).

7 Steven Van de Walle, *Trust in the Justice System: A Comparative View Across Europe* (2009).

8 Jonathan Jackson et al., *Trust in Justice: Notes on the Development of European Social Indicators* (2011).

9 Drawing similarly upon the development of the European Social Survey justice indicators. See David Beetham, *The Legitimation of Power* (London: Macmillan, 1991); Mike Hough & Stefano Maffei, "Trust in Justice: Thinking about Legitimacy", *Criminology in Europe* (2)2013: 5–10.

10 Jonathan Jackson and Jacinta Gau, "Carving up Concepts? Differentiating between Trust and Legitimacy in Public Attitudes towards Legal Authority", in E. Shockley et al. (eds), *Interdisciplinary Perspectives on Trust*, Switzerland: Springer International, 2016: 49–69.

This study revealed shared values to be central to the exercise of access to justice.<sup>11</sup> They also inform people's expectations of judicial processes, whether in formal, quasi-formal/administrative or informal contexts. These shared values include equality before the law<sup>12</sup>, non-discrimination, respect for others, fairness and a lack of corruption in society. At community level, they relate to equality and non-discrimination in social affairs, and transparency, independence and fairness in judicial processes. These values relate to fundamental principles of human rights.<sup>13</sup>

These shared values also imply a common expectation of accountability. Accountability is one of the prerequisites of democratic or good governance. It means holding elected or appointed officials charged with a public mandate responsible and answerable for their actions, activities and decisions. Civil society plays an important role in holding those in public office to account. Accountability seeks to know who is liable for what and what kind of conduct is illegal.<sup>14</sup>

Typically, justice sector reform within a rule of law context relates to policy goals that include ensuring public security, promoting efficient and predictable governance, respecting guarantees of equality and fundamental rights protections, and ensuring that the State is bound by the law, especially through an independent

and accountable judiciary.<sup>15</sup> Progress in each of these areas will vary from one context to another, and the different goals may sometimes appear to be in tension with one another, for example between public security and illegal migration on the one hand, and human rights protections on the other.

The focus of this study was access to justice. Access to justice is an important touchstone when exploring challenges relating to the rule of law. Where fundamental rights are violated or threatened, ensuring an effective remedy requires: (i) recognition of fundamental rights (in law or custom); (ii) awareness of those rights; (iii) the confidence and ability to make claims when rights are contested or threatened; (iv) fairness of any adjudication process; (v) fairness of the outcome; and (vi) fairness and effectiveness of enforcement and implementation of decisions concerning rights. All are essential to obtaining an effective remedy, whatever the process and context.

Awareness of rights is an important first step on the path towards accessing justice. Recognition of those rights is a necessary foundation in ensuring there is a pathway towards justice. The fundamental principle of equality before the law and respect for shared values will be critical factors in improving access to justice in Myanmar.

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11 It is important to note that the findings of this study are indicative rather than representative, because of the sampling methodology (Annex I), and cannot be generalised to any wider population. Study sites and respondents were purposively selected. The findings describe only the study sample. Statistically relevant comparisons cannot be made among respondents.

12 Equality before the law is the cornerstone of fair trials rights and due process as enshrined in Article 7 of the Universal Declaration of Human Rights (UDHR) which states that "All are equal before the law and are entitled without any discrimination to equal protection of the law", as well as Art. 14 of the International Covenant on Civil and Political Rights.

13 Human rights are rights inherent to all human beings, of whatever nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everyone is equally entitled to their human rights without discrimination. International human rights law lays down obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

14 United Nations Economic and Social Council. Definition of basic concepts and terminologies in governance and public administration. Note by the Secretariat; Committee of Experts on Public Administration. Fifth session New York, 27–31 March 2006, Agenda item 5 Compendium of basic terminology in governance and public administration (UN Doc. E/C.16/2006/4).

15 While a definition of the rule of law was not attempted for this study, its constituent elements were taken as: (i) government bound by law; (ii) fair and transparent enactment, adjudication and enforcement of law; (iii) the contents of law ensure respect for equal dignity; and (iv) access to justice.

See also World Justice Project, Factors of the WJP Rule of Law Index at <http://worldjusticeproject.org/factors> and Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, 23 August 2004 (UN Doc. S/2004/616).





ပြည်မတောင်တန်း  
ပူးပေါင်းရေစာချုပ်ကျောက်တိုင်  
၁၉၄၇-ခုမေဖော်ဝါရီလ(၁၂)ရက်

Photo: Panglong Monument in Panglong Town, Loilem Township, Shan State



## I. JUSTICE CONCERNS

“I heard that we can claim back our land when the new government took over. So, I submitted complaint letters to the ward, township, district and state levels. But it is very hard to prove that we own the land because nobody has a legal land grant. The only proof is the farmers’ knowledge [of who has ownership]. I think it will be hard to solve everything because the central government controls everything [...] We shall wait and see.”

– Respondent, Shan State

“The women in the village especially rely on my mediation when they suffer during family quarrels, or when a drunken husband beats his wife. I usually admonish the husbands; I tell them that divorcing or beating their wives is similar to beating a dog raised by oneself, and that couples are the ones who should love each other most in the world.”

– Respondent, Rakhine State

“We do not have anyone who can reliably help us with our issues. There is no place to go to for our problems. I am not the only one who has to give money like this. Everybody has to pay. So, I cannot complain. I just paid and came home.”

– Respondent, Shan State

The first research question was: How do people seek access to justice?

This section first considers respondents’ perceptions of certain dimensions of justice and how justice operates. This provides a context for examination of the issues and grievances people identified as being of greatest concern to them.

## WHAT IS JUSTICE?

While the study did not explore respondents’ understanding of justice as a concept, it sought their perspectives on eight important dimensions of justice:

- informal vs. formal pathways to justice;
- the principle of equality, and the State’s responsibility to protect and defend human rights;
- the right to seek remedy;
- private vs. public authority;
- transitional justice (in a conflict-affected society);
- due process;
- gender equality;

- individual rights in relation to communal harmony and cohesion.

To a significant extent, respondents shared common perspectives on these dimensions of justice. A large majority of respondents in all three states concurred in their views on six of the eight dimensions of justice (as expressed in given statements).

Large majorities expressed a preference for dispute settlement at local levels, thought that people are able to seek help, and obtain remedies and fair outcomes for injustices, and considered procedural fairness to be more important than obtaining a favourable outcome to a dispute. Large majorities also agreed that men and women have equal value and equal responsibility to care for culture and tradition (Table 2.1).

Table 2.1 Perspectives on Justice\*

Dimensions of Justice	Statements	R	K	S
		332	300	520
FORMAL vs. INFORMAL	(a) Some disputes are best settled in the courts.	9.9%	16.7%	10.8%
	(b) It is better for most disputes to be settled within the community.	85.5%	71.7%	73.1%
EQUALITY	(a) Every person deserves equal care and concern by the government regardless of religion or ethnicity.	69.9%	90.7%	81.3%
	(b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups.	24.7%	7.7%	12.5%
FATE vs. REMEDY	(a) Injustices can befall people, and there is nothing they can do about it because it is their fate.	12.7%	7.3%	14.0%
	(b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome.	83.4%	89.3%	81.5%
PRIVATE vs. PUBLIC	(a) Matters within a family are private and internal to it, and a married man has complete authority over his spouse and children.	60.2%	40.0%	48.3%
	(b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others.	33.7%	45.0%	39.4%
TRANSITIONAL JUSTICE	(a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar.	38.0%	43.3%	51.2%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	57.2%	50.0%	37.5%
PROCESS vs. OUTCOME	(a) Being fairly treated throughout a process is more important than obtaining a favourable outcome.	82.8%	97.7%	89.8%
	(b) Obtaining a favourable outcome is more important than being treated fairly during a process.	13.3%	2.0%	5.0%
GENDER	(a) Men and women have equal value, but women have greater responsibility to care about culture and tradition.	14.2%	2.7%	6.2%
	(b) Men and women have equal value, and both have equal responsibility to care about culture and tradition.	84.6%	96.0%	92.1%
INDIVIDUAL vs. COMMUNITY	(a) Individual rights must be as respected as communal harmony.	60.2%	70.3%	55.6%
	(b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised.	34.3%	26.3%	38.8%

\* Total responses to each pair of statements do not add up to 100% as some respondents chose “both” statements, some chose “neither”, others refused to answer, and some others indicated that they did not know which statement was more aligned to their personal views.

In each state, most people agreed that every person deserves equal care and concern regardless of religion or ethnicity. However, consensus on this was much stronger in Kachin (90.7% agreed) than in Rakhine (69.9%). Similarly, those in Kachin (70.3%) were much more likely than those in Shan (55.6%) to agree that individual rights must be respected equally with communal harmony.

Attitudes were more polarised regarding the private and public dimensions of justice. A majority of respondents in Rakhine and Shan, but not in Kachin, thought that matters within the family are private and that a married man has complete authority over his family. In Kachin, females and males held different views on this.

Attitudes also diverged in relation to transitional justice. A majority in Rakhine and Kachin thought that problems in the past must be addressed, whereas a majority in Shan thought that the focus should be on building a new Myanmar. Again, in Kachin, females and males held different views on this matter.

In Kachin and Shan, the perceptions of Buddhist and Christian respondents also diverged on the topic of transitional justice. In Shan, Buddhists and Christians held different views with respect to both the private/public dimension of justice and transitional justice.

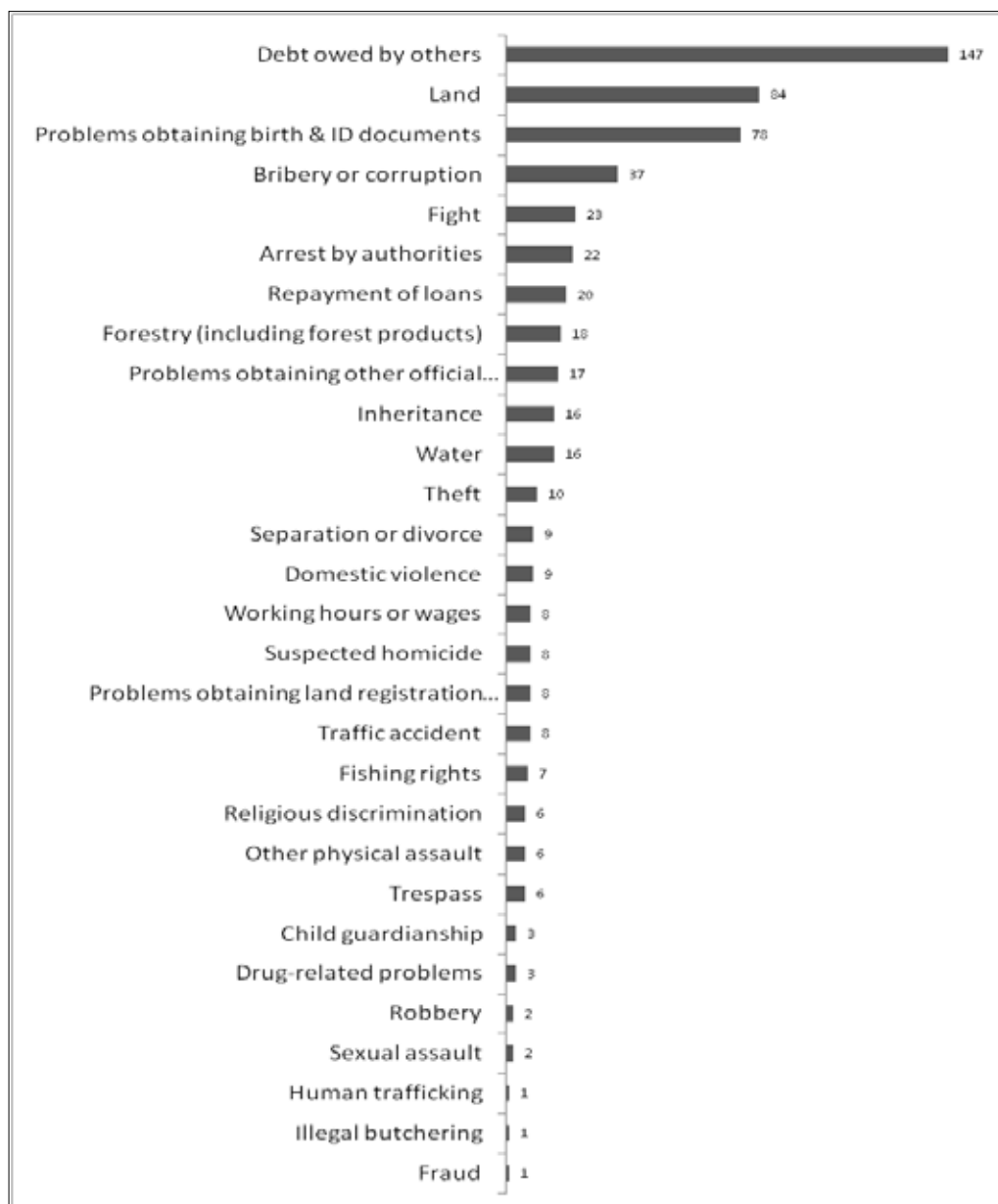
*In summary, to a significant extent, important dimensions of justice are commonly understood and agreed with. Large majorities concurred with the principle of equality for all and with gender equality. In terms of dispute settlement, large majorities favoured seeking assistance, preferred disputes to be settled locally and valued receiving fair treatment above a favourable outcome. However, majority opinions sometimes diverged state*

*by state (e.g. those of Kachin respondents regarding private vs. public spheres of justice and Shan respondents regarding transitional justice).*

## WHAT ISSUES DO PEOPLE SEEK JUSTICE ON?

In the course of a year, the 1,152 respondents had been involved in 576 disputes and grievances. Over half of these disputes took place in Rakhine. Sixty percent of all disputes concerned debt, land, obtaining civil documentation, or bribery or corruption (Figure 2.1).

Figure 2.1 Incidence of Most Common Disputes



The proportions of respondents involved in disputes varied across the three states, and was highest in Rakhine. Just under one third (102 of 332) of respondents in Rakhine reported their involvement in a dispute (a total of 295 disputes). One quarter (76 of 300) of respondents in Kachin reported their involvement in 133 disputes and 16.2% (84 of 520) of respondents in Shan reported their involvement in 148 disputes.

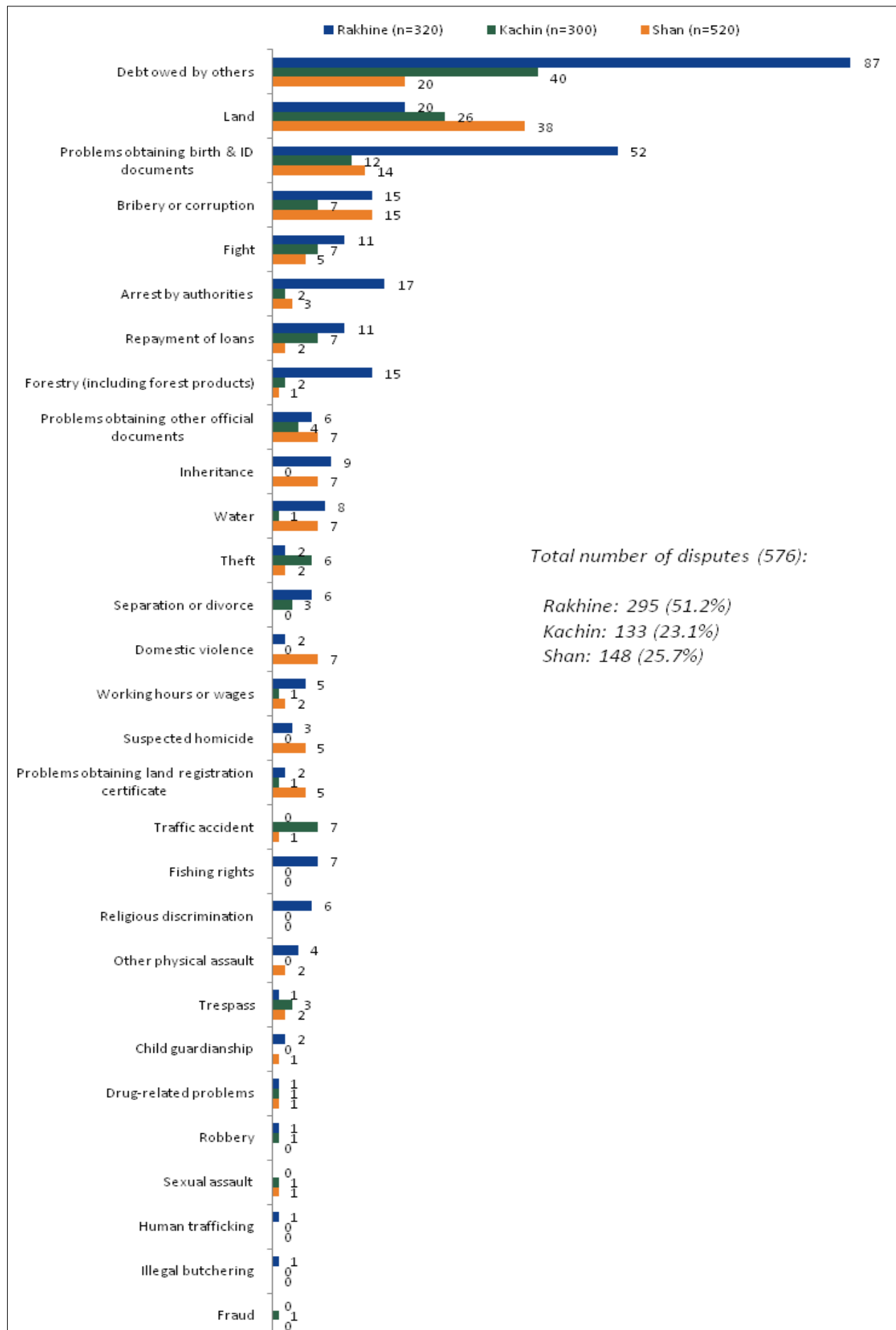
The most common type of dispute related to debt owed by others. Significant differences were apparent between states regarding such disputes (Figure 2.2). Among all people who had been involved in any type of dispute, those in Ra-

khine were significantly more likely (27%) than those in Shan (3.8%) to have been involved in a dispute over debt owed to them.

The second most common type of dispute concerned land. However, the proportion of disputes about land did not vary significantly state by state (accounting for 6.3% of disputes in Rakhine, 8.6% in Kachin and 7.3% in Shan).

Problems obtaining birth and identity documentation were also common across all three states. Again, people in Rakhine were more likely (16.3%) to have encountered such problems than those in Kachin (4.0%) or Shan (2.7%).

Figure 2.2 Incidence of Most Common Disputes by State



## Debt Owed by Others

In the great majority of debt-related disputes (133 of 147 disputes), respondents in all three states identified other individuals as the opposite party. Disputes within groups or families were also reported. Despite the high incidence of reported disputes over debt owed, disputes over loan repayment were reported much less frequently. This suggests the issue of non-payment of debt is prevalent but likely to be under-reported.

In Shan, it was evident that an underlying cause of cycles of indebtedness was a lack of financial services for the poor, particularly in relation to accessing capital. People in Shan tried to secure access to capital by: (i) borrowing as individuals, including purchasing on credit and mortgaging property as collateral for a loan; (ii) participating in “collective savings” or “borrowing/lending” groups; and (iii) participating in government cooperative loan groups. Disputes arose from each of these types of borrowing and lending activities.<sup>16</sup>

*The key issues to emerge around debt, therefore, were (i) the prevalence of disputes between individuals over debt, (ii) the suspected underreporting of non-payment of debt, and (iii) cycles of indebtedness caused by a lack of financial services to the poor, as was evident in Shan.*

## Land

The majority of land-related disputes (67 of 84 disputes) appear to be in the nature of private quarrels involving either other individuals, groups or family members. The remaining cases identified the township Land Records Depart-

ment, the township GAD, the Tatmadaw, the state government, companies/businesses, the local administration or the municipality as opposing parties.

Several factors within Myanmar’s complex legal framework governing land use and administration contribute to land-related disputes in Shan and Kachin. These include:

- Historical land confiscation, leading to (i) continued abuse of authority; (ii) difficulties reclaiming land; and (iii) disputes arising from return/redistribution of confiscated land;
- Land tenure insecurity, arising from formalisation of the land market (through the 2012 land laws), which had the effect of prioritising official land registration (over communal, traditional and ancestral claims) and leading to disputes arising from increasing attempts to formally register land;
- Increasing land prices;
- Business activities by companies;
- Application of different sources of law or authority (over the same parcel of land).<sup>17</sup>

*The key issue to emerge around land, therefore, was that, in Shan and Kachin, the legal framework for land ownership, use and administration contributed to land-related disputes. Contributing factors include historic land confiscation, formalisation of the land market, increasing land prices and inconsistent administration of authority.*

16 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

17 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.



## Problems Obtaining Birth and Identity Documentation

Regarding problems with obtaining civil documentation, in the majority of instances in all three states (55 of 78), respondents identified the township Immigration Department as the party with whom the dispute occurred. In other instances, they identified other government departments or officials, including the state government, the local administration, the township GAD, hospitals, nurses/midwives, the Department of Education, the district GAD and the local police. One respondent reported a family member and another reported a private individual as the opposing party.

In Rakhine, Muslim respondents reported 44 of the 52 instances of problems obtaining civil documentation. Some Muslim participants in focus group discussions reported that such difficulties were a consequence of the violence in 2012–2013. Some stated that Muslim applicants (from central and southern Rakhine) seeking to acquire or renew identity documentation who reported themselves as belonging to the Islamic faith would generally, though not always, be subjected to a long review process.<sup>18</sup>

In Shan and Kachin, some respondents who belonged to ethnic or religious minority groups (particularly those of Chinese and South Asian descent) had encountered difficulties in obtaining identity documentation. Some stated that they were only able to obtain the documentation they sought after navigating lengthy, complicated processes and making additional payments, while others were not able to obtain the documents. Some respondents from ethnic minority groups such as the Ta'ang/Palaung and Kokang explained that poor education and a lack of fluency in the Myanmar language were challenges in acquiring Citizenship Scrutiny Cards.<sup>19</sup>

Respondents also described various adverse impacts and difficulties resulting from their lack of civil documentation. These included limitations on freedom of movement, the right to own land and access to education and business opportunities. Where a parent faced difficulties in obtaining identity documentation, it also made it more difficult for his or her children to obtain the necessary documents, thereby perpetuating the problem.

*The two key issues to emerge around obtaining or renewing civil documentation, therefore, were: (i) reported discriminatory treatment, as experienced by Muslim applicants in Rakhine and those belonging to ethnic or religious minority groups in Shan and Kachin; and (ii) the adverse impact of not having civil documentation. Complaints related most frequently to the township Immigration Department. Poor education and lack of fluency in Myanmar language also hindered some respondents.*

## Bribery, Corruption and Other Abuse of State Authority

Almost all (32 of 37) reported instances of bribery or corruption concerned a state official. The highest number of complaints was recorded against the township Immigration Department, followed by the township Land Records Department and the GAD (at township and district levels). Complainants also implicated the police, the state government, local administration officials, the Tatmadaw, the municipality and the Road Transport Administration Office in bribery or corruption.

18 UNDP Access to Justice and Informal Justice Systems Research, Rakhine State.

19 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.

Bribery or corruption, or other abuse of state authority, generally – though not always, nor necessarily – appears to occur in conjunction with other issues. These include problems obtaining birth and identity documentation (see above), a land registration certificate<sup>20</sup> or other official documents<sup>21</sup>, or forestry-related disputes.<sup>22</sup>

In Rakhine, people described having to negotiate arbitrary conduct by public officials on a regular basis. In study sites where the Border Guard Police exercised jurisdiction, such complaints were heard most frequently in relation to them (although other complaints were directed at Forestry Department and Customs officials). In other areas, people complained about the township police, municipal officials and Immigration Department officials.<sup>23</sup> In Kachin and Shan, people perceived that ineffectual and corrupt policing fuelled the issue of narcotic drugs in their communities (see below).<sup>24</sup>

*The key issue to emerge around abuse of state authority, therefore, was that it appears to be systemic and prevalent. A wide range of official entities were implicated and abuse was reported in a range of formal judicial contexts. In Rakhine, arbitrary conduct by officials, in particular the Border Guard Police, was most commonly reported. In Kachin and Shan, people perceived a link between inadequate policing and drug culture.*

## Legal Protection of Women

Only nine cases of domestic violence and two cases of sexual assault were recorded through the questionnaire administered to 1,252 households. A few more cases emerged in focus group discussions and key informant interviews.<sup>25</sup>

With respect to domestic violence, women suffering from sexual and physical violence within their marriage<sup>26</sup> were often unable to access help and had difficulty ensuring their own safety. A primary reason for their lack of access to justice was that social norms treated domestic violence as a “dispute between couples” to be “mediated”. Relatives, community leaders and local administrators almost always encouraged couples to stay together, through a variety of means – for example, by admonishing the husband to not hit his wife – rather than treating domestic violence as a crime of physical assault with a victim in need of protection. Any intervention generally aimed to maintain marital harmony; this seldom recognised the inherent vulnerability of a woman in an unequal and abusive relationship.

Respondents also alluded to a variety of other social and cultural norms that make it difficult for women to leave abusive situations. Patriarchal norms reinforce the authority of a husband over his wife and oblige women to obey their husbands. Furthermore, religious beliefs have stigmatised divorce as a moral issue; consequently, religious leaders take the position that they cannot help a woman obtain a divorce.

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20 Of eight cases of problems obtaining a land registration certificate recorded through the structured interview questionnaire, respondents identified the township Land Records Department in a majority of instances (6 of 8).

21 Of 17 cases of problems obtaining other official documentation recorded through the structured interview questionnaire, respondents identified the township Immigration Department, the township Land Records Department or GAD officials in a majority of instances (10 of 17).

22 Of 18 forestry-related disputes recorded through the structured interview questionnaire, respondents identified the township Forestry Department in a majority of instances (14 of 18).

23 UNDP Access to Justice and Informal Justice Systems Research, Rakhine State.

24 UNDP Access to Justice and Informal Justice Systems Research, Kachin State and Shan State.

25 The following commentary does not specify the relationship between parties involved in reported instances of sexual assault, domestic violence and other forms of violence against women, including their marital status.

26 Although many domestic violence cases take place between married couples, they are usually not recognised as criminal cases.

In relation to sexual assault<sup>27</sup>, only a few reported rape cases had reached the formal justice system. The others were either handled by community leaders and local administrators<sup>28</sup> or settled by the victims and their families physically moving out of their communities.<sup>29</sup>

Two further issues emerged from focus group and in-depth discussions. Outsiders who came to Putao in Kachin often took advantage of the women's desire to move to the lower parts of Myanmar. Women there who cohabited with government officials and military officers assigned to the township were subsequently abandoned when the officials were reassigned to another duty station. These "unofficial" marriages sometimes produced children, and the women were left to raise the children by themselves. In southern Shan, a community leader described some women from the community moving to China in search of work, and reported hearing that some of these women were forced into marriages with Chinese men.

*The key issue to emerge around the legal protection of women, therefore, was the difficulties abused and vulnerable women faced in accessing help and securing justice. The exercise of formal, impartial judicial procedures that hold the perpetrator to account under the law was reportedly rare. Sexual assault is rarely recognised as criminal and prosecuted. While social and cultural norms, particularly patriarchal beliefs, regarding the value, status and rights of women go unchallenged, women remain vulnerable to abuse.*

## Drugs

In Kachin and Shan, people who took part in focus group discussions generally considered drug and drug-related issues to be a priority concern for their communities.

Respondents described increased neighbourhood crime and general insecurity within their communities due to the prevalence of drugs and addiction. They also noted that drug addiction has a profound social and economic impact on families. Children are particularly vulnerable to the consequences of drug use within the family and community. In both Kachin and Shan, people perceived that ineffectual and corrupt policing, and the complicity of government officials in drug culture, contribute to the prevalence of drugs in their communities. In Kachin's Moe Nyin Township, people who took part in focus group discussions made links between jade mining in nearby Hpa Kant and increased drug use and addiction in their communities. In Shan, some respondents spoke about the introduction of narcotic drugs into their communities as part of the market economy.

*The key issue to emerge around drugs is that the drug culture prevalent in Kachin and Shan is a priority concern in communities. The prevalence of drugs is having severe social and economic impacts, and profound adverse effects on families. Officials are implicated to some extent in the prevalence and perpetuation of drug culture.*

27 This issue was not reported in Rakhine.

28 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.

29 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

## Other Issues Affecting Specific Groups

Focus group and in-depth discussions revealed issues that were specific to particular states. In Rakhine, people spoke about the impact of the violence in 2012–2013 and the local orders in place in northern Rakhine.<sup>30</sup> In Kachin (but also in other places), the general concern to achieve equality and non-discrimination under the law has been manifested at its most extreme through armed conflict. In Kachin, people were concerned about armed conflict between the Tatmadaw and the Kachin Independence Army, and also about natural resource extraction.<sup>31</sup> In Shan, people had problems accessing public services (such as water and electricity) and spoke of harmful effects on their health that they attributed to corruption and a lack of regulation.<sup>32</sup>

Members of vulnerable groups tended not to express their justice-related concerns, and their concerns were often not recognised. As noted above, this was especially evident in respect of domestic violence against women.

Some remarked that there seemed to be official acceptance that inherent cultural characteristics were grounds for differential treatment of citizens. Such discrimination was encountered in particular by Muslim respondents in Rakhine and those belonging to ethnic or religious minority groups in Shan and Kachin, who had sought to obtain civil documentation. In northern Rakhine, some Muslim respondents spoke of the adverse impact of local orders on their right to free movement, household registra-

tion, marriage and the right to build. Internally displaced respondents also faced various forms of discrimination. The reporting of such experiences of differential treatment on the basis of ethnicity, religion, sex and/or vulnerability indicates people's aspirations to equal recognition and fair and equitable treatment by others, including the State.

Many people sought access to justice because of the negative impacts they have experienced as a consequence of a lack of official accountability to the public. Land disputes relating to the 2012 land laws; difficulties obtaining civil documentation; bribery, corruption and other abuse of state authority; the political economy of conflict, and resource extraction; the impact of conflict on internally displaced people; and issues of fair access to public services, all point to an acute deficit of accountability that has driven people to seek access to justice.

## Priority Concerns About Justice

The 262 respondents who had been involved in a dispute during the previous 12 months indicated which type of dispute they considered to be most important. This information was used to track the settlement trajectories of the disputes causing the greatest concern (Figure 2.5).

Unsurprisingly, the three most commonly reported types of dispute were also considered the most important (Figure 2.3).

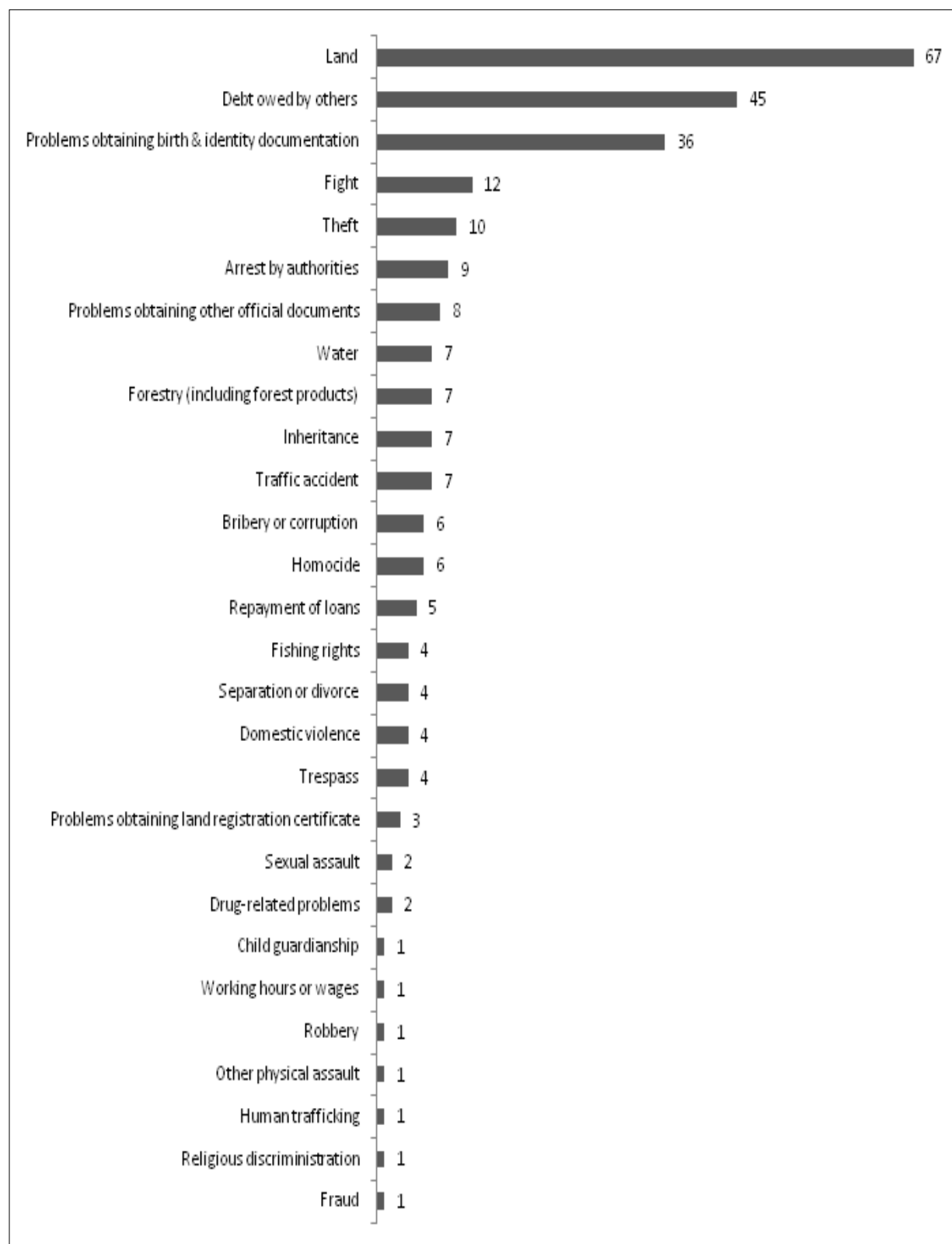
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30 UNDP Access to Justice and Informal Justice Systems Research, Rakhine State.

31 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.

32 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

Figure 2.3 Priority Concerns About Justice





## II. PATHWAYS TO JUSTICE

How did those involved in a dispute go about trying to resolve it and why did they act as they did? Who did they involve? Was the dispute resolved – and were they satisfied?

This section examines the principal pathways to justice available to those who sought to resolve their disputes, beginning with that preferred by most: direct negotiations. It considers the frequent involvement of third parties (in the informal, quasi-judicial/administrative and formal justice systems) and the relative success of these two pathways to settlement. It concludes with the observation that the formal pathway, through the criminal justice system, was rarely taken.

## Direct Negotiations

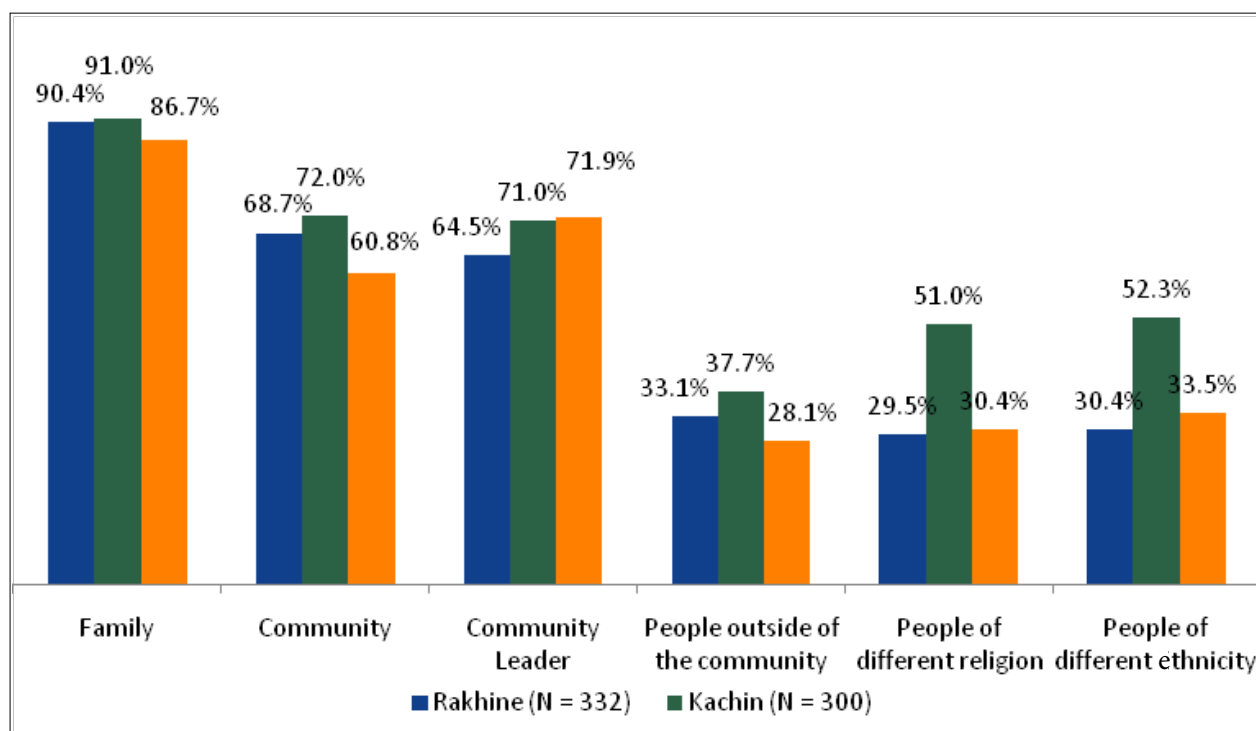
In two thirds of cases (174 of 262), the aggrieved person negotiated directly with the other party to the dispute. One third (59) of these matters were settled through negotiations.

Almost two thirds (67 of 102) of those in Rakhine attempted direct negotiations as a first step

in dispute settlement, and over one third (26 of 67) of their disputes were settled. Settlement by this means was less successful in Kachin and Shan. Over three quarters (59 of 76) of those in Kachin and over half (48 of 84) of those in Shan attempted direct negotiations as a first step, but less than one third of their disputes were settled (18 of 59 in Kachin; 15 of 48 in Shan).

The immediate parties to a dispute were not the only ones included in direct negotiations. Given the nature of familial and communal bonds (Figure 2.4), it was not uncommon for the families of disputing individuals and other community members to be involved. Traditionally, the father or patriarch spoke on behalf of his immediate family members. People seeking resolution to their dispute also asked for assistance from various community leaders or individuals who were respected or considered to be influential (see Part III).

Figure 2.4 Levels of Trust



*A key finding to emerge, therefore, was that the majority of disputants attempted, initially, to settle the matter locally via direct negotiations, usually including trusted others. However, this approach was not often successful.*

## Third-Party Assistance

Overall, 203 respondents either did not first attempt direct negotiations or their negotiations were unsuccessful. A majority of these (107 of 203; 52.7%) went on to seek assistance from a third party. One third (36) of their disputes were settled.

However, the proportions of people who sought help from a third party, and the outcomes of that action, varied across states. In Shan, this pathway to settlement appears to have been most effective. In Shan, close to two thirds (43 of 69; 62.3%) of respondents sought third-party assistance, whereas less than half of those in Rakhine (37 of 76; 48.7%) and Kachin (27 of 58; 46.6%) did so. Shan also produced the highest rate of dispute settlement where a first set of third-party actors was involved (18 of 43 disputes; 41.9%). In Kachin, 33.3% of disputes and in Rakhine, 24.3% of disputes were settled with the assistance of a first set of third parties.

Where involving a first set of third-party actors did not lead to settlement, only a minority of respondents went on to seek assistance from a second or third set, to settle 40 disputes. This led to the settlement of 10 additional disputes. Thus, eventually, 46 of the 107 cases assisted towards settlement by third parties were settled.

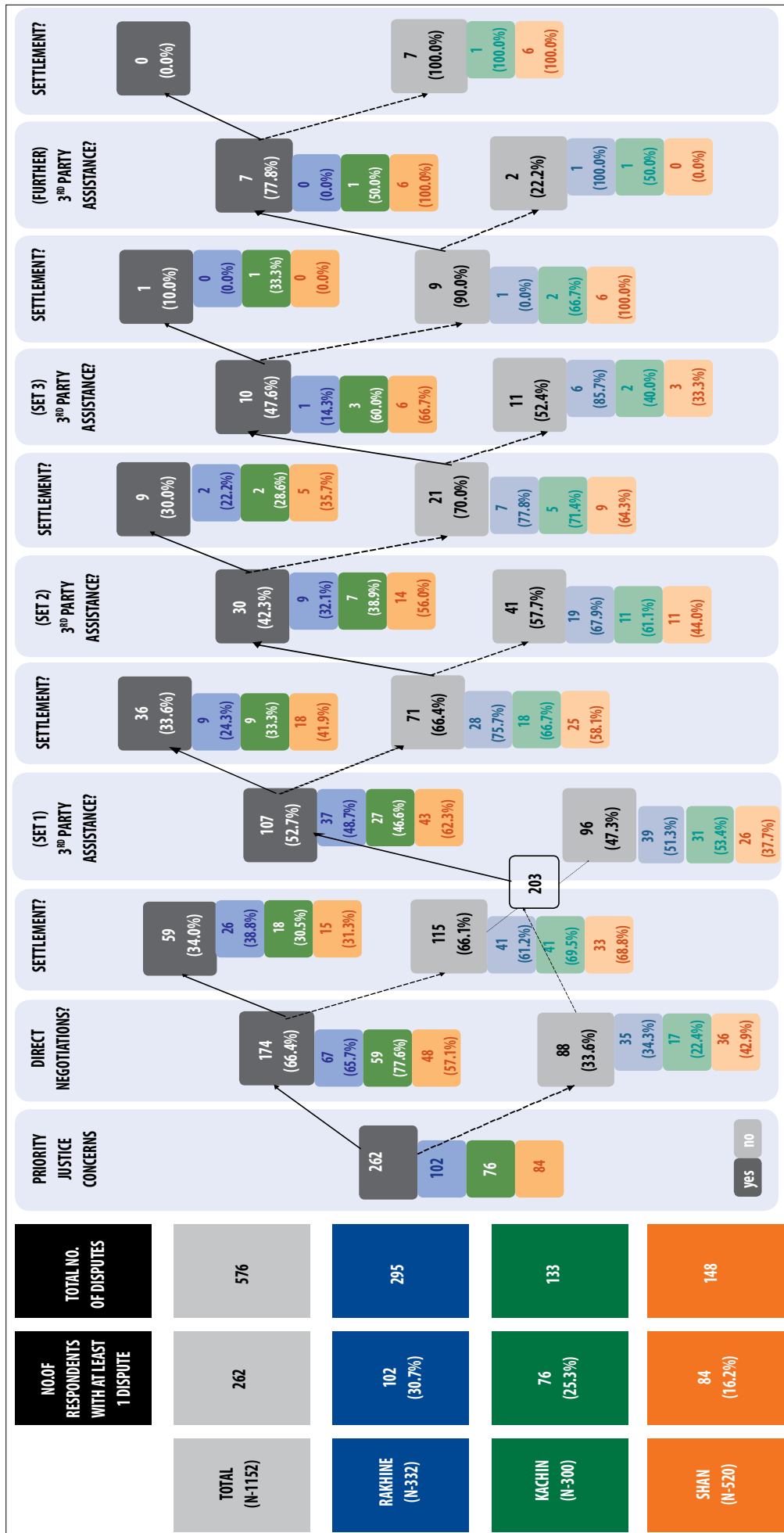
Overall, of the 262 disputes reflecting priority concerns about justice that were traced, 105 were resolved: 59 (22.5%) were settled through direct negotiations and another 46 (17.6%) were settled with third-party assistance. Significantly, 157 disputes (60.0%) were left unresolved.

Figure 2.5 summarises the settlement trajectories of the 262 disputes reflecting priority concerns about justice.

People seeking dispute resolution with assistance from a third party generally approached people at or below the township level in the first instance –notably, people who do not play a role in the criminal justice system (see Part III and Annex III). A significant majority of respondents had never visited the township GAD (92.4%), the township police (92.2%) or the township court (96.2%) to seek help over the course of a year.



Figure 2.5 Settlement of Priority Concerns By Negotiation and Third-Party Assistance



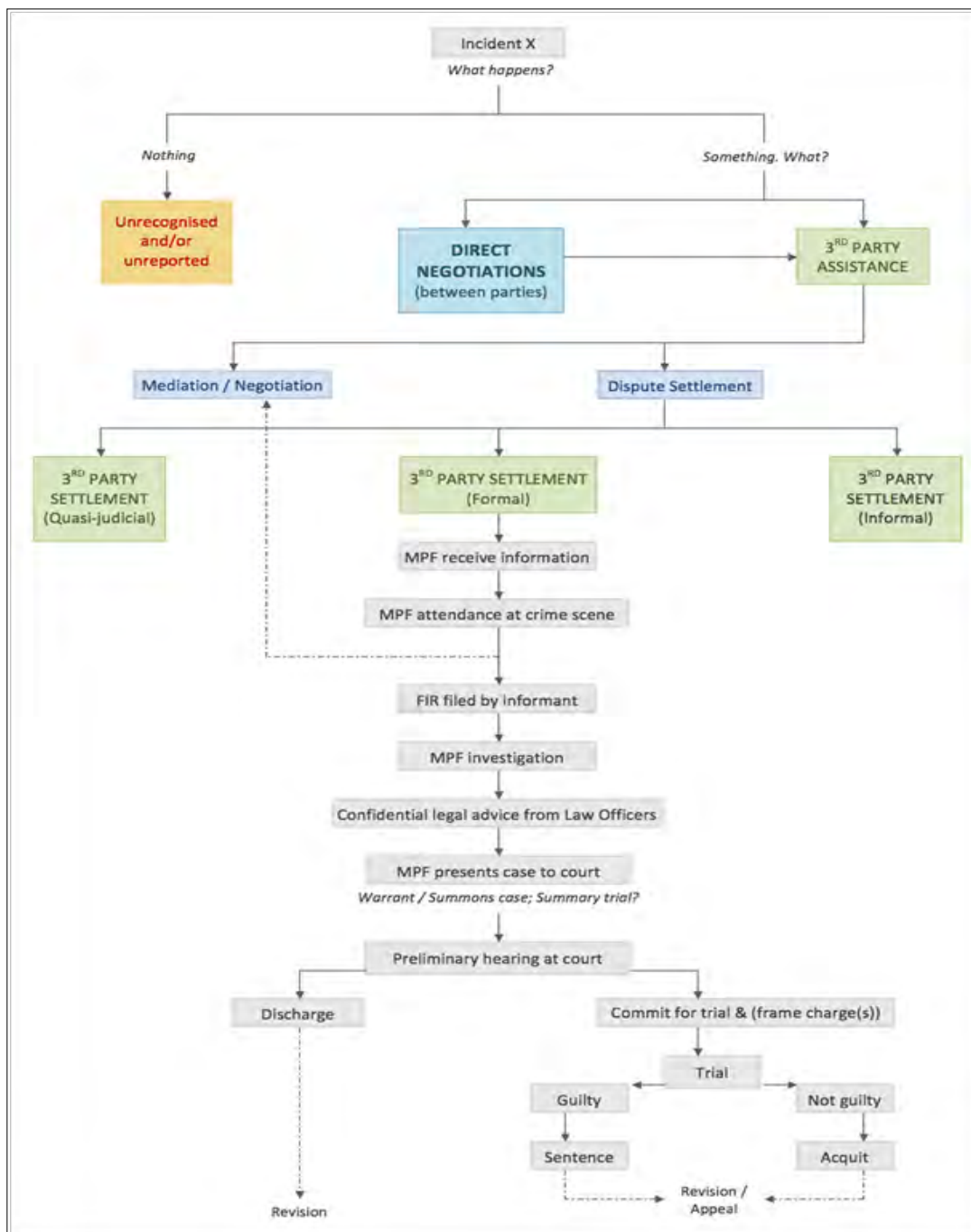
Consequently, people with a role in the criminal justice system – police, lawyers and courts – had rarely assisted in settling these disputes. They were the first set of third-party actors in only 8 of 107 settled disputes, the second set of third-party actors in only 2 of 30 settled disputes, and the third set of third-party actors in only 2 of 10 settled disputes.

*In summary, either in the first instance, or when direct negotiations were unsuccessful, a majority of people approached local, non-state third*

*parties, rather than local officials, to assist, and cultural and social considerations influenced the outcome. Sixty percent of priority disputes remained unresolved.*

Figure 2.6 shows the pathways available to those who seek third-party assistance: informal, quasi-judicial/administrative and formal (i.e. the criminal justice system). As noted above, the informal pathway using third parties was favoured by the majority of respondents.

Figure 2.6 Dispute Settlement With Third-Party Assistance



## Criminal Justice System

It is important to reiterate at this point that large majorities of respondents across all three states shared common perceptions about key dimensions of justice. In addition, large majorities across all three states had been involved in a few common types of dispute and considered such disputes to be of priority concern. Most striking, perhaps, is that, in seeking settlement of these priority disputes, the majority of respondents across all three states favoured local

and non-formal, rather than official and formal, pathways.

This raises a significant question regarding the criminal justice system: why did respondents favour the informal pathway to justice in settling their disputes and resolving their concerns? The following section casts light on this as it considers the wider context.

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## WHY AND HOW DO PEOPLE SEEK JUSTICE?

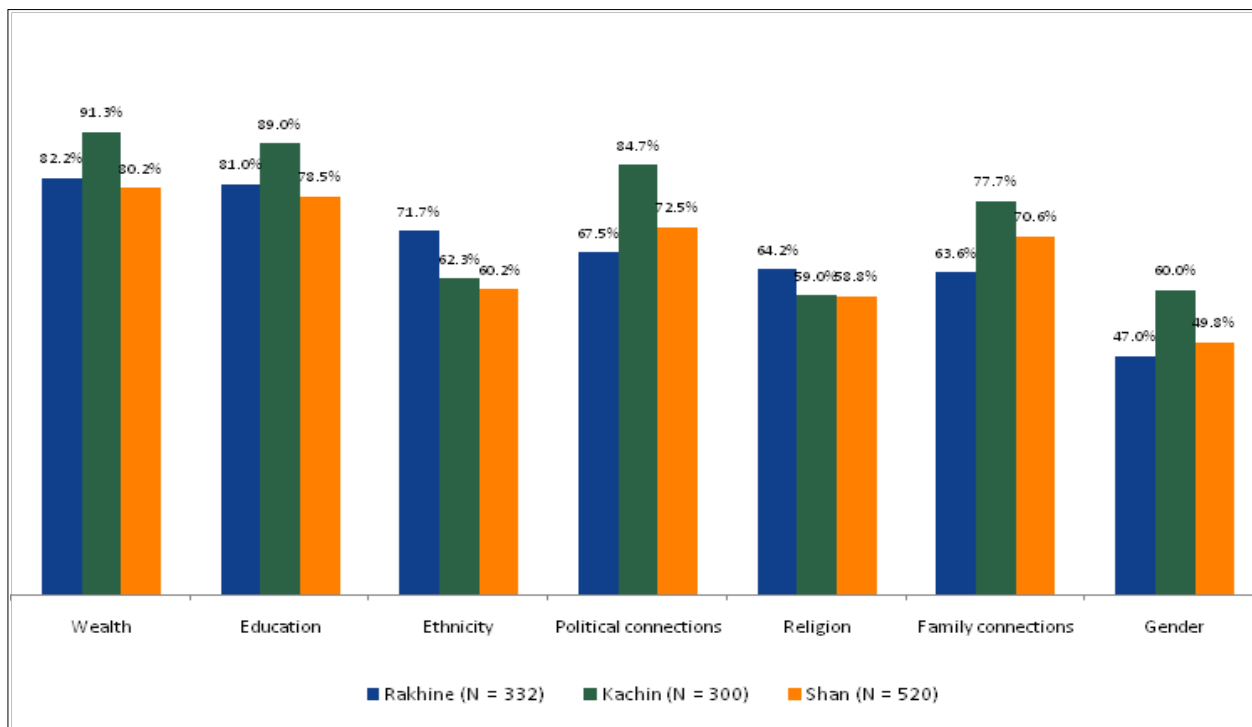
This section provides an analysis of why and how respondents sought justice. It discusses various factors that appear to have influenced people's choices and behaviour in seeking, or not seeking, to address their concerns or resolve their disputes. Among these, a person's own identity, status and perceptions, the nature of the problem, and cultural and social contexts all came into play.

The first, and significant, point is that certain groups of people have concerns about justice that may not be recognised by others, or by society at large. Such non-recognition may have greater impact on those belonging to vulnerable and/or minority groups. When asked about factors that might be considered to determine how well a person is treated in Myanmar society, people overwhelmingly cited wealth (83.7% of

respondents in all three states) and education (81.9%). Large majorities also believed that political connections (74.2%) and family connections (70.4%) determine how well people are treated. Considerably higher proportions of respondents in Kachin than in other states stated that these, as well as gender, were determining factors. This suggests that Kachin respondents, more than others, either detect or experience discrimination in Myanmar society.

The majority in all three states also identified ethnicity (64.0%), religion (60.4%) and gender (51.6%) as determining factors in how well a person is treated. A higher proportion in Rakhine than in Kachin or Shan considered ethnicity and religion to be determining factors (Figure 2.7).

Figure 2.7 Factors Determining Treatment in Myanmar Society



Closely related to the issue of non-recognition of concerns about justice is the non-reporting of problems. The study specifically investigated this phenomenon. People were asked what they would do in two hypothetical situations in which officials asked for extra payment: (i) when a person wished to register their land; and (ii) when a person wished to renew their identity documentation. The results revealed considerable reluctance to report such an incident (which could indicate resignation to the likelihood of encountering such a situation).

A majority of respondents from Kachin reported that they would or might report the two incidents<sup>33</sup>, whereas a majority of respondents from Shan indicated that they would not.<sup>34</sup>

Across all three states, just over half the female respondents stated that they would not report either incident (Scenario 1: 52.1%; Scenario 2: 52.3%).

It appears, then, that minority and vulnerable communities are more likely not to report abuse of state power as demonstrated in these hypothetical scenarios. In Rakhine, a majority of Muslim respondents said they would not report the second scenario (relating to identity documentation).<sup>35</sup> In Shan, large majorities of Kokang, Ta'ang/Palaung and Chinese respondents stated that they would not report the first scenario (relating to registration of land), and significant majorities of Kokang, South Asian and Chinese respondents indicated that they would not report the second.<sup>36</sup>

The second point to highlight is that people were inclined towards negotiation, mediation or some other form of conciliation as the primary means of dispute settlement. This is illustrated by their attempts at direct negotiation, and the mediation/negotiation role that third parties play. Arguably, this form of justice-seeking behaviour is useful when the formal justice

33 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.

34 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

35 UNDP Access to Justice and Informal Justice Systems Research, Rakhine State.

36 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

37 UNDP Access to Justice and Informal Justice Systems Research, Shan State, Kachin State and Rakhine State.

system suffers from a deficit in public trust and is perceived as lacking legitimacy.

This tendency towards some form of conciliation is exhibited across the entire spectrum of concerns about justice, from the least to the most serious. Respondents attempted direct negotiations in five of the six recorded cases of homicide, which led to the settlement of three cases. Notably, in the only case that was referred to the police, the respondent reported that the problem was left unresolved.

Third, a significant proportion of justice-related concerns involved interactions with state officials or those with a role in the provision of public services. Such disputes generally, though not always, fell within the following categories: problems obtaining birth and identity documentation; bribery or corruption; arrest by authorities; forestry-related disputes; problems obtaining other official documentation; problems obtaining a land registration certificate; and certain types of land-related disputes.<sup>37</sup>

Where such disputes were identified, only a few were reported to be settled, for example:

- Problems obtaining birth and identity documentation: 6 of 26 settled;
- Forestry-related disputes: 2 of 7 settled;
- Problems obtaining other official documentation: 1 of 8 settled;
- Problems obtaining a land registration certificate: 0 of 3 settled.

On the other hand, where problems involved private parties, the parties were generally able to settle a greater proportion of disputes (e.g. traffic accident: 7 of 7 settled; fight: 9 of 12 settled). The main exceptions to this, however, were private land-related disputes and debts owed by others (together, 11 of 45 settled).

With respect to certain categories of “private” disputes, specifically those that relate to the legal protection of women – sexual assault and domestic violence – the six cases identified as of priority concern were all reported to be settled. The issues of non-recognition and non-reporting noted above are likely to have had an impact on such disputes.

Fourth, the criminal justice system appears to play only a limited role in relation to individuals’ and communities’ concerns about justice. One of the main functions of the system appears to be the maintenance and enforcement of law and order (e.g. through the 1945 Police Act, the 1961 Restriction of Movement and Probation of Habitual Offenders Law and other pieces of “special laws” that reverse the burden of proof onto the defence), rather than protecting the rights and interests of the poor and vulnerable.

With respect to land disputes relating to the 2012 land laws, the courts do not generally play a role as such cases are dealt with quasi-judicially through the GAD. Similarly, problems relating to difficulties obtaining civil documentation are generally handled by the Immigration Department with no recourse to the judicial system. Where complaints are made against state officials for perceived corruption or abuse of authority, the courts are not an avenue for redress.

In relation to the issue of drugs, which was considered a priority concern for the community in a majority of study sites across Kachin and Shan, the response of the criminal justice system was one of law enforcement – with many drug users being sentenced to prison terms – rather than one that prioritised approaching the issue from a health perspective.<sup>38</sup>

Regarding sexual assault and domestic violence, there are serious concerns about the rights, safety and security of women victims.

38 UNDP Access to Justice and Informal Justice Systems Research, Kachin State and Shan State.

When cases of rape did reach the criminal justice system, perpetrators were prosecuted and punished. A few judges in Shan reported dealing with civil divorce cases where domestic violence was cited as a reason for separation. However, the issuance of judicial protective orders does not appear to be a practice in Myanmar. All of the reported cases of physical assault arising from domestic violence were in the process of being withdrawn from court.<sup>39</sup>

The judicial processes for settling land-related disputes were generally the longest. This may mean that there were more respondents who were willing to pursue further assistance in order to secure restoration of their land rights, compared with those dealing with other types of dispute.

It is also worth emphasising that, even when peoples' disputes were settled, not all complainants received a favourable and/or satisfactory final outcome. Some identified unfavourable or unjust outcomes, or expressed frustration at the lack of enforcement of decisions, dissatisfaction with undischarged obligations or dissatisfaction with the costs associated with settling a dispute.<sup>40</sup>

A final matter for consideration is why some people did not attempt to seek help for their problem. Those who did not seek help from anyone or did not take any other action (relating to the priority justice-related concerns listed in Figure 2.3) gave various reasons, including:

- Seeking help or taking action would only be a waste of time (26 instances);
- Seeking help or taking action would damage the relationship with the other party, or bring shame upon the other party (25 instances);

- The problem was not sufficiently important (23 instances);
- Fear, including feelings of hopelessness, shame, and that seeking help would result in problems for the respondent or lead to communal violence (22 instances);
- Respondents did not know what to do, or who could be of help (17 instances);
- Seeking help or taking action would cost too much (11 instances);
- The other party has more money (7 instances);
- Help was too far away (5 instances);
- The other party has more personal connections (3 instances);
- Empathy with the other party (2 instances).

*In summary, personal, social, cultural and systemic factors influenced peoples' decisions on how to resolve their concerns and disputes. Key points to emerge from self-reported behaviour were:*

- Most notably, large majorities (particularly in Kachin) thought that their concerns would not be heeded because of differential treatment in Myanmar society that particularly favours those with wealth, education and connections; this perception can likely be linked to the underreporting of incidents (particularly by minorities and, in tandem with patriarchal attitudes, in respect of violence against women);
- People overwhelmingly favoured

39 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

40 UNDP Access to Justice and Informal Justice Systems Research, Rakhine State, Kachin State and Shan State.

conciliation as the primary means of dispute settlement;

- People implicated state officials and public service providers in a significant proportion of justice-related concerns, and these matters were less likely to be resolved than others;
- The criminal justice system plays only a limited role in efforts to resolve peoples' grievances; it appears to be more active in the maintenance of law and order;
- Not all settlements resulted in favourable and/or satisfactory final outcomes;
- People who did not seek assistance to resolve their priority concerns revealed reluctance, resignation and/or a lack of knowledge of how to get help; many did not wish to disturb personal relationships and social cohesion by pursuing the matter.



### III. JUDICIAL ACTORS

“We judges are working hard and making our best efforts so that people have easy access to the judicial system. We are trying to be independent from the administration and the executive. ... We are trying our best to make courts [places] where people want to go and seek justice and fairness, and places that people can have confidence in.”

– Township judge



“Even if we practise customary ways, we respect the notion of justice, to make bigger cases smaller and to make smaller cases disappear. ... Our goal is to have a satisfactory agreement, [a] decision for both parties. Even if there is anger, [we have all] been living in the same community for a long time, and our children will live together. ... If we measure our decisions with enacted laws, we do not know whether [they are] fair or unfair. [We] try to achieve a satisfactory decision for both parties.”

– Rawang CLA representative, Kachin

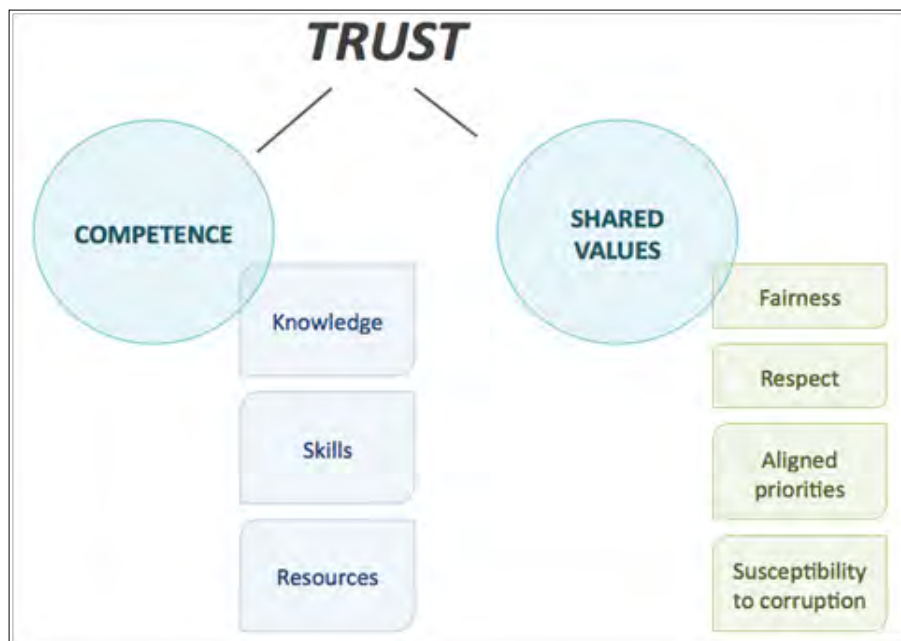
## FORMAL ACTORS

The second research question was: What are people’s perceptions of, and trust and confidence in, the formal justice system?

It has been established that, overwhelmingly, people in the study opted not to use the formal justice system. This section examines people’s perceptions of judges, law officers and the police.<sup>41</sup>

In this context, “competence” was defined to include up-to-date knowledge, sufficient training and adequate resources – and whether they had the right intentions to do what the public trusts them to do. The notion of right intention or shared values included alignment with community priorities, respectful treatment, fair treatment and outcomes, and having no expectation of additional payment for services (see Introduction).

Figure 3.1 Trust

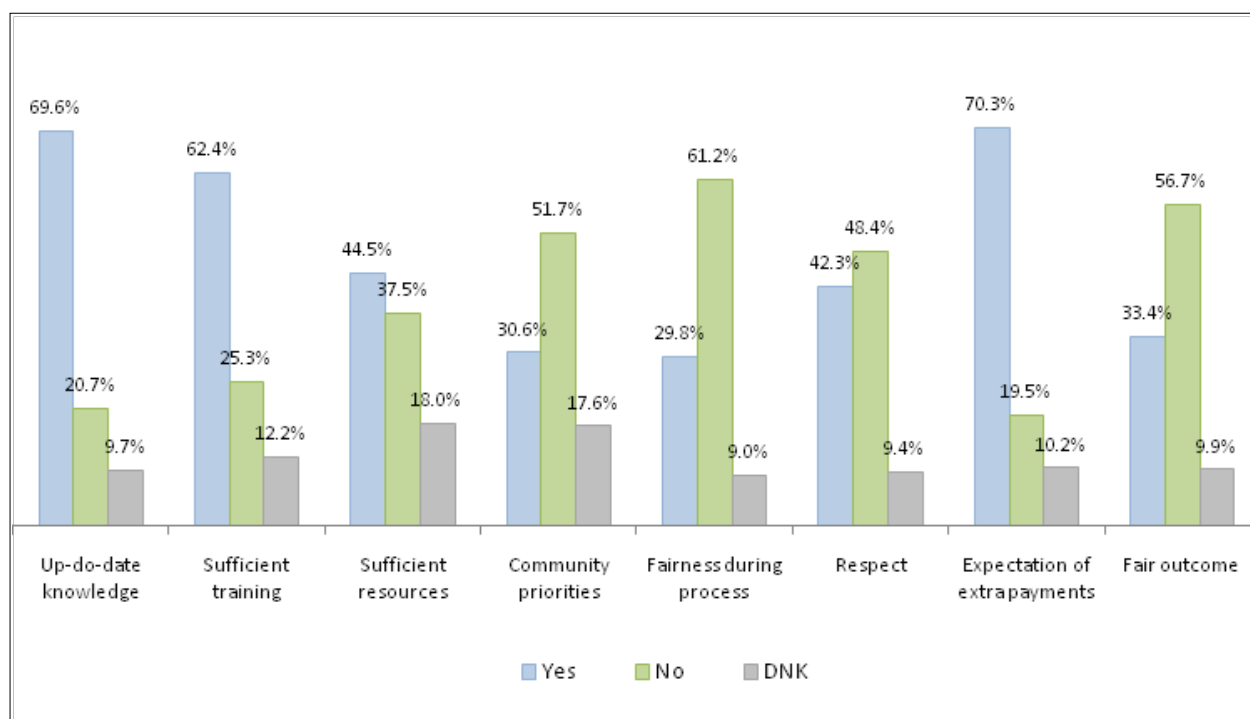


41 Note that ward and village tract administrators have formal dispute settlement roles, as provided in the 2012 Ward or Village Tract Administration Law (see Part III).

There appeared to be significant levels of appreciation of judges' competency. A majority of respondents in all three states perceived judges to be competent: more than two thirds (69.6%) thought that they have up-to-date knowledge

and almost two thirds (62.4%) believed them to be sufficiently trained. Notably, less than half (44.5%) perceived judges to have sufficient resources to carry out their responsibilities (Figure 3.2).

Figure 3.2 Perceptions of Judges

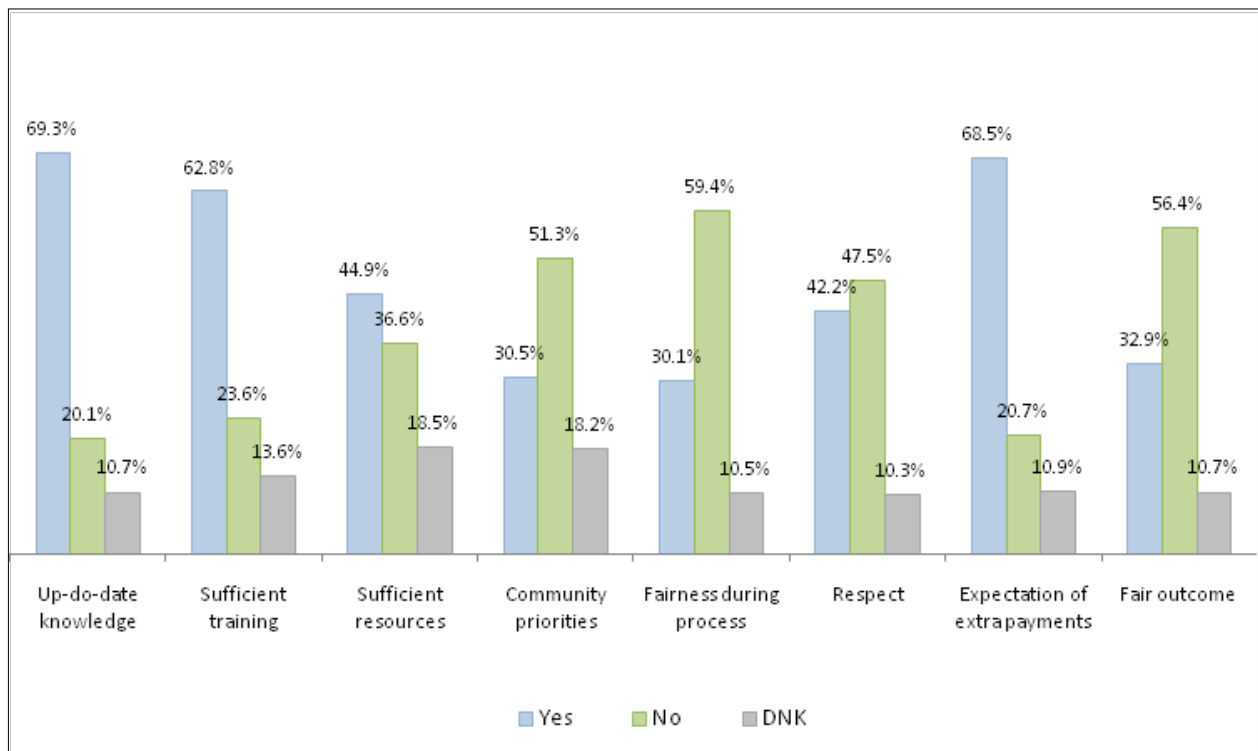


However, respondents did not generally seem to regard judges positively. Almost half (48.4%) thought that judges would not treat them with respect and over half (51.7%) perceived that judges are not aligned with community priorities. Over half (56.7%) thought that judges would not come to a fair outcome to a dispute brought before them and almost two thirds (61.2%) believed that judges would not be fair when resolving disputes. More than two thirds (70.3%) of respondents thought that judges would expect additional payments for their services.

## Law Officers

Respondents held similar perceptions of law officers as they did of judges (Figure 3.3). A majority in all three states perceived law officers to be competent, with up-to-date knowledge (69.3% of respondents) and sufficient training (62.8%). Lesser than half (44.9%) believed law officers had sufficient resources to carry out their responsibilities.

Figure 3.3 Perceptions of Law Officers



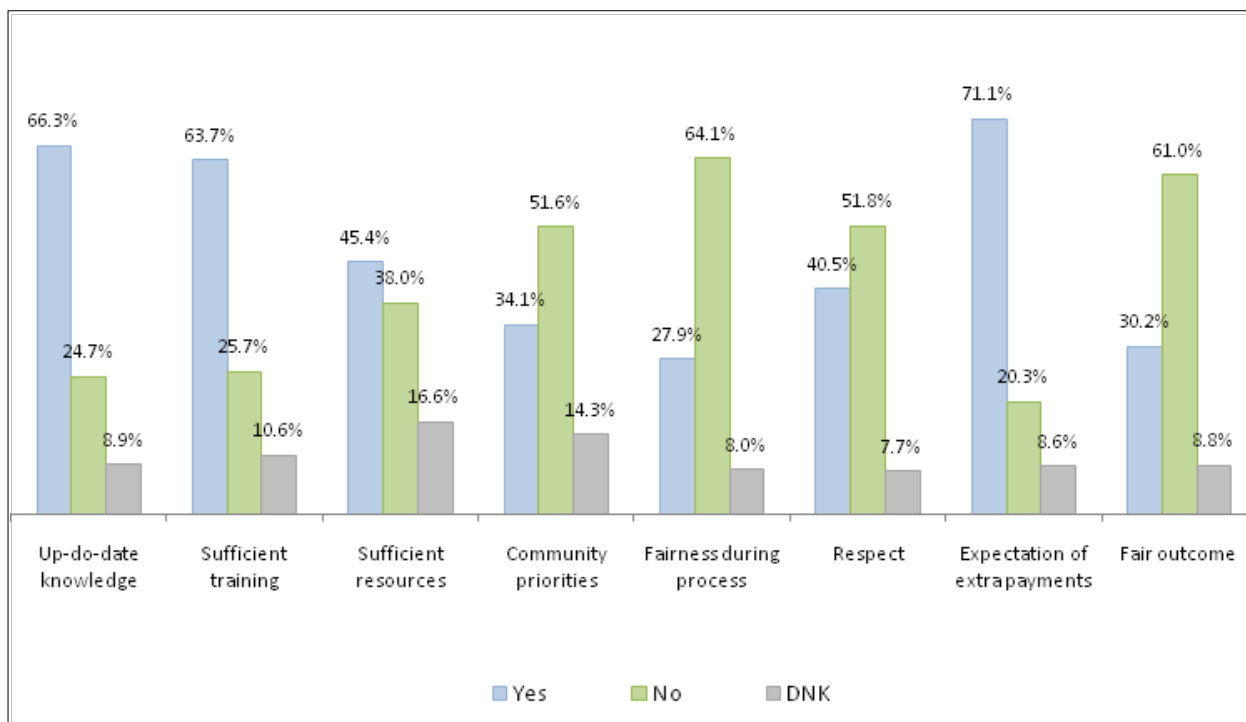
Respondents did not generally seem to regard law officers positively. Almost half (47.5%) thought that law officers would not treat them with respect and more than half (51.3%) thought that they are not aligned with community priorities. More than half (56.4%) thought that law officers would not come to a fair outcome to a dispute brought before them and even more (59.4%) thought that they would not be fair when resolving disputes. Over two thirds (68.5%) of respondents thought that law officers would expect additional payments for their services.

## Police

Respondents' perceptions of the police broadly followed the same patterns as their perceptions of judges and law officers<sup>42</sup> (Figure 3.4). A majority of respondents in all three states perceived the police to be competent: more than two thirds (66.3%) thought that they have up-to-date knowledge and almost two thirds (63.7%) believed them to be sufficiently trained. Less than half (45.4%) believed the police have sufficient resources to carry out their responsibilities.

42 Note that, for respondents in northern Rakhine, reference to the police indicates the Border Guard Police, rather than the normal township police force.

Figure 3.4 Perceptions of Police



It was clear that respondents did not tend to regard the police positively. More than half (51.8%) thought that the police would not treat them with respect and a similar proportion (51.6%) thought that the police are not aligned with community priorities. Well over half (61.0%) thought that the police would not come to a fair outcome to a dispute brought before them and almost two thirds (64.1%) thought that the police would not be fair when resolving disputes. A high proportion (71.1%) of respondents thought that the police would expect additional payments for their services.

Regarding shared values, these results indicate that public confidence in the police is even lower than the low levels of public confidence in judges and law officers. Nonetheless, although less than one third of respondents believed that judges and law officers are aligned with community priorities, a slightly higher minority believed this of the police.

### Some State-Specific Perspectives

Overall, respondents’ perspectives on judges, law officers and the police varied state by state. For example, a significantly higher majority of respondents in Kachin (73.3%) than in other states (Shan, 58.5%; Rakhine, 50.3%) perceived that judges, law officers and the police did not have sufficient resources to carry out their responsibilities.<sup>43</sup>

More significantly, perhaps, in Shan, a sizeable minority (around 45%) thought that they would be treated with respect by judges, law offices and the police – more than thought they would not. In marked contrast, in both Kachin and Rakhine, clear majorities consistently thought the opposite – that they would not be treated with respect by either judges, law officers or the police.<sup>44</sup>

43 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.

44 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

## COMMUNITY LEADERS – FORMAL, QUASI-FORMAL AND INFORMAL ACTORS

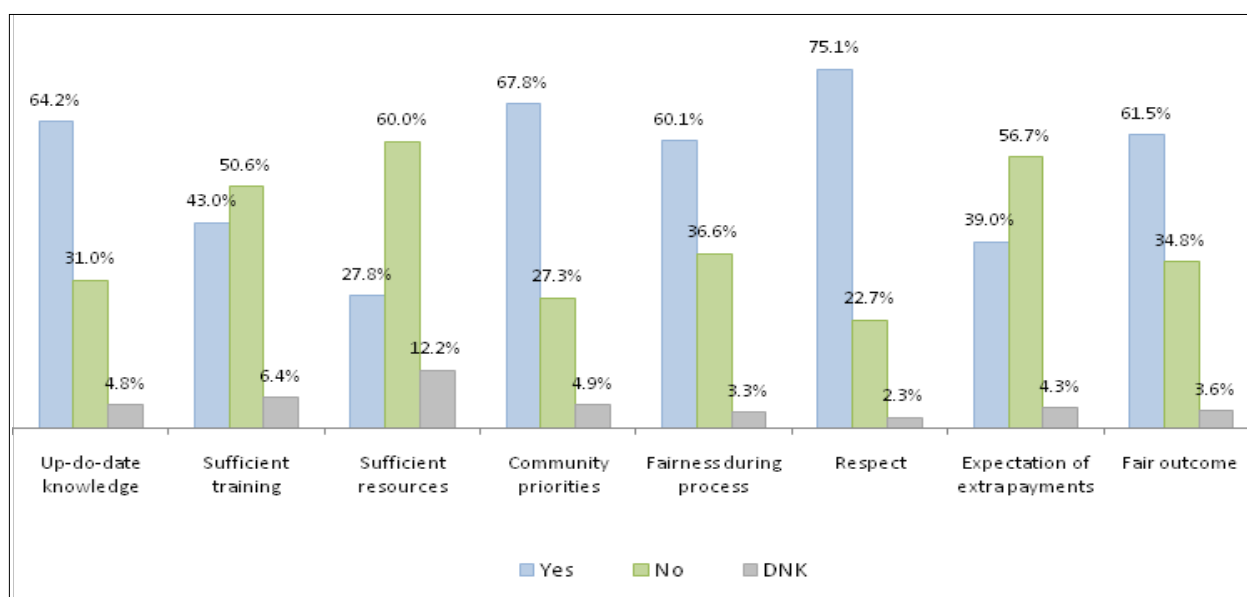
This section takes a similar approach in considering respondents' perceptions of community leaders.<sup>45</sup> Within this broad and eclectic group, some people (ward and village tract administrators) have formal dispute settlement roles and others (e.g. local GAD officials) have quasi-judicial/administrative roles.<sup>46</sup> Many have no formal role in the judicial system but are active in assisting dispute resolution at local and community levels.

Respondents' perceptions of this disparate

group of community leaders (with formal, quasi-judicial/administrative and informal roles) differ in significant respects from their perceptions of judges, law officers and the police.

In terms of competence, almost two thirds (64.2%) of respondents believed that community leaders have up-to-date knowledge. However, half of them perceived community leaders not to have sufficient training (50.6%) and a majority (60.0%) perceived them not to have sufficient resources to carry out their responsibilities.

Figure 3.5 Perceptions of Community Leaders



In general, a majority of respondents perceived that community leaders would be fair when resolving a dispute (60.1%) and would come to a fair outcome (61.5%) if a dispute were brought before them. A smaller majority (56.7%) thought that community leaders would not expect extra payments for their services. More than two thirds (67.8%) of respondents believed that community leaders are aligned

with community priorities. Most notably, three quarters (75.1%) thought that community leaders would treat them with respect.

*In marked contrast to their perceptions of judges, law officers and the police, respondents had more positive views of community leaders regarding their having shared values and right intentions.*

45 The Myanmar version of this term translates to ward and village leaders, and was otherwise not defined for research respondents. It would, however, be understood to include local administrators.

46 2012 Ward or Village Tract Administration Law (Part III).



# INFORMAL ACTORS

“There is a range of practices in solving problems, but there are core themes underlying all the practices: same strategy, but different procedure. If we trace back to history, we see the same phenomenon [among the different Kachin clans]. For example, for a wedding, the Lisu give gong[s], and the Jinghpaw give buffalo — the point is that something has to be given.”

—CLA representative, Kachin

“We wanted to solve the [rape] case within our village. But the man who committed the crime is a bad person. The victim said he was immoral, and that they were afraid that he would do bad things again since his family has money. Anyway, they wanted him to be imprisoned by law, so the Dagi finally handed him over to the local administrator.”

– Female youth group leader, Shan

The third research question was: What is the range of informal justice processes that exist in the local area, and how do they operate?

This section focuses on the actors who are involved in the justice system at the local level, in particular (but not exclusively<sup>47</sup>) those who play a quasi-judicial/administrative or informal role in meeting local concerns and resolving local disputes (see also Annex III). It first identifies the general characteristics of these individuals and groups (Table 4.1). These very different characteristics underpin the different roles they play,

or potentially play, in local dispute resolution (Table 4.2).

In Table 4.1, categorisation of a person or entity within a particular “sphere of influence” does not necessarily mean that their authority was limited to that domain. Rather, it indicates the primary sphere in which they exercised their authority. The dagi, for example, exercises authority over the local area, potentially arbitrates disputes according to custom and maintains strong cultural and/or religious ties with the community.

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<sup>47</sup> Local administrators operate under the 2012 Ward or Village Tract Administration Law (Part III). They represent the lowest tier of the official government administrative structure.

Table 4.1 Third-Party Actors: General Characteristics

SPHERE OF INFLUENCE	ACTOR	GENERAL CHARACTERISTICS
Geographic Area	<p><b>LOCAL ADMINISTRATOR</b></p> <p>(Ward/village tract administrator (W/VTA))</p>	<ul style="list-style-type: none"> <li>• Lowest tier of official government administrative structure</li> <li>• Indirectly elected by their constituency<sup>48</sup> and assume responsibilities<sup>49</sup> pursuant to the 2012 Ward and Village Tract Administration Law</li> <li>• As Chairperson of ward/village tract Farmland Management Committee, has dispute settlement role in relation to farmland-related disputes</li> <li>• Responsible for issuing various letters of recommendation for different government departments, and acts as witness during court proceedings or other transactions</li> <li>• Fluent in Myanmar</li> <li>• Generally, more educated and of higher economic status than others within their community</li> </ul>
	(Village administrator)	<ul style="list-style-type: none"> <li>• Encountered in non-tract villages</li> <li>• Not recognised in the 2012 Ward and Village Tract Administration Law</li> <li>• Generally, manages one village and reports directly to VTA</li> <li>• Few observable differences in the practical day-to-day role from VTAs</li> </ul>
	AREA-IN-CHARGE/ SECTION LEADER	<ul style="list-style-type: none"> <li>• Local leader who exercises authority over a geographic section of a ward or village (which may be based on ethnicity or religion)</li> <li>• Some appointed by local administrators, others chosen by community members</li> <li>• Majority males; few females</li> </ul>
	Dagyi	<ul style="list-style-type: none"> <li>• Local leader who exercises authority over a geographic section of a ward or village (which may be based on ethnicity or religion)</li> <li>• Some appointed by local administrators, others chosen by community members</li> <li>• Majority males; few females</li> </ul>
	10 HHH	<ul style="list-style-type: none"> <li>• Involved in indirect elections of local administrators</li> </ul>
Tradition and Culture	“ELDERLY AND RESPECTED PERSON”	<ul style="list-style-type: none"> <li>• Generally, though not always, distinct from the elders appointed by the township administrator to oversee the election of local administrators</li> <li>• Involved in dispute settlement either alone or together with local administrators/Dagysis</li> <li>• Terminology potentially varied across locations</li> <li>• Majority males; few females</li> <li>• Generally of advanced age</li> <li>• Generally tend to have one or more of the following characteristics: higher wealth, education or personal connections</li> </ul>
	SOCIAL LAWYER	<ul style="list-style-type: none"> <li>• Eloquent individual hired to advocate on behalf of a party before ad hoc committee hearings – which follow some traditional (Kachin) customs, but generally allow for greater flexibility</li> </ul>
	TRADITIONAL ELDER	<ul style="list-style-type: none"> <li>• Elder in the community who is respected for knowledge of traditions</li> </ul>



	<b>CULTURE AND LITERATURE ASSOCIATION (CLA)</b>	<ul style="list-style-type: none"> <li>• Ethnicity-based organisation</li> <li>• Although main activities revolve around preservation and promotion of cultural heritage, including language and dance, can also have a dispute settlement function</li> </ul>
<b>Religion</b>	<b>ISLAMIC COUNCIL OF SOUTHERN SHAN STATE</b>	<ul style="list-style-type: none"> <li>• Religious organisation with activities centred around: (i) Islamic education; (ii) maintenance of mosques and schools; (iii) Ramadan moon sighting; and (iv) settlement of personal matters (marital affairs and inheritance) in accordance with Shariah</li> <li>• Composed of men generally learned in Islamic law</li> </ul>
	<b>(LOCAL) RELIGIOUS LEADERS</b> (Muslim, Christian, Buddhist)	<ul style="list-style-type: none"> <li>• Muslim: Mullawis; Christian: Pastors, Preachers, Thin Htauk<sup>50</sup> (few females); Buddhist: Sayardaw</li> <li>• Both lay and non-lay persons</li> </ul>
	<b>CHURCH COMMITTEE</b>	<ul style="list-style-type: none"> <li>• 12–15 members</li> <li>• Settlement of marital disputes and cases of adultery</li> </ul>
<b>Political Parties and MPs</b>	<b>MEMBER OF PARLIAMENT (MP)</b>	<ul style="list-style-type: none"> <li>• State and Union parliaments</li> <li>• Approached or contacted where MP is native to the ward/village, or through personal connections</li> </ul>
	<b>POLITICAL PARTY</b>	<ul style="list-style-type: none"> <li>• Township branches, where contacted</li> </ul>
<b>Women and Youth</b>	<b>YOUTH GROUP</b>	<ul style="list-style-type: none"> <li>• Male and female youth groups (that are also sometimes ethnicity based)</li> </ul>
	<b>MYANMAR WOMEN'S AFFAIRS FEDERATION (MWAF)</b>	<ul style="list-style-type: none"> <li>• A non-governmental organisation with the mission of empowering and promoting the advancement of women<sup>51</sup></li> </ul>
<b>Security</b>	<b>PEOPLE'S MILITIA</b>	<ul style="list-style-type: none"> <li>• People's militia units are organised by, and come under the direct control of, the Tatmadaw for the purposes of "maintaining security"</li> <li>• Each unit operates within its village/village tract or town area</li> <li>• Unit members are recruited from within the local area (i.e. village/village tract or town area)</li> </ul>

48 For each ward and village tract within the township, the township administrator appoints five respected elders to a Supervisory Board, which in turn forms groups of 10 households. Each 10-household leader (10 HHH) is entitled to cast a vote for its preferred candidate from a list of nominees. The Supervisory Board is also responsible for overseeing the election process. The winning candidate must meet a number of criteria, and must be approved and officially appointed by the township administrator.


49 W/VTAs are officially assigned 32 duties, among which are responsibilities relating to law and order and community peace and tranquillity in the ward/village tract, disciplinary matters and matters relating to development projects.

50 A lay person approved by church members to serve a role in religious activities. A thin htauk does not receive a salary from the church and must adhere to certain behavioural standards, such as abstaining from alcohol and always speaking the truth.

51 See [www.mwaf.org.mm/en/about-us](http://www.mwaf.org.mm/en/about-us).

Table 4.2 Third-Party Actors: Locations and Roles

SPHERE OF INFLUENCE	ACTOR	LOCATION			ROLE(S)
		RAKHINE	KACHIN	SHAN	
Geographic Area	LOCAL ADMINISTRATOR (Ward/village tract administrator (W/VTAs)) ----- (Village administrator)	Dark Blue	Dark Green	Red	<ul style="list-style-type: none"> <li>Dispute settlement</li> <li>Mediation/negotiation</li> <li>Facilitation</li> </ul>
	AREA-IN-CHARGE/SECTION LEADER	Light Blue	Green	Orange	<ul style="list-style-type: none"> <li>Facilitation</li> <li>Dispute settlement</li> </ul>
	Dagyi	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> <li>Mediation/negotiation</li> </ul>
	10 HHH	Dark Blue	Dark Green	Red	<ul style="list-style-type: none"> <li>Election of local administrator</li> <li>Facilitation</li> <li>Dispute settlement (potential)</li> </ul>
Tradition and Culture	"ELDERLY AND RESPECTED PERSON"	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> <li>Nomination/appointment of Dagyi</li> <li>Election of W/VTAs</li> </ul>
	SOCIAL LAWYER	Light Blue	Light Green	Light Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> <li>Mediation/negotiation</li> </ul>
	TRADITIONAL ELDER	Light Blue	Light Green	Light Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> <li>Mediation/negotiation</li> </ul>
	CULTURE AND LITERATURE ASSOCIATION (CLA)	Light Blue	Green	Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> </ul>
Religion	ISLAMIC COUNCIL OF SOUTHERN SHAN STATE	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> </ul>
	(LOCAL) RELIGIOUS LEADERS (Buddhist, Christian, Muslim)	Dark Blue	Dark Green	Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> </ul>
	CHURCH COMMITTEE	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> </ul>
Political Parties and MPs	MEMBER OF PARLIAMENT (MP)	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Facilitation</li> </ul>
	POLITICAL PARTY	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Facilitation</li> <li>Investigation</li> </ul>
Women and Youth	YOUTH GROUP	Dark Blue	Dark Green	Orange	<ul style="list-style-type: none"> <li>Dispute settlement</li> <li>Facilitation</li> </ul>
	MYANMAR WOMEN'S AFFAIRS FEDERATION (MWWAF)	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Facilitation</li> <li>Dispute settlement</li> </ul>
Security	PEOPLE'S MILITIA	Light Blue	Light Green	Orange	<ul style="list-style-type: none"> <li>Facilitation</li> </ul>


 Of 10 sites in Rakhine, 8 sites in Kachin and 14 sites in Shan:  
 Presence across all study sites (within each state)  
 Presence across half of or more study sites (within each state)  
 Presence across less than half of study sites (within each state)

In general, local community leaders situated below the township level were the most prominent third parties in settling respondents' day-to-day problems. Those who exercise authority over a geographic area generally played a more significant role than those operating within other spheres of influence.

In Rakhine, people sought out local administrators (i.e. officials) where mutually acceptable outcomes could not be reached by parties to a dispute, or in relation to issues where local administrators have an explicit mandate. In Kachin, areas-in-charge or section leaders sometimes played equally significant roles in dispute settlement as those of local administrators. Given the expanse of Shan State, where a single ward or village tract might cover a large geographic area, Dagyis (where they existed) generally exercised more authority over their communities and were more involved in settling day-to-day problems than were local administrators.

Depending on the type of dispute, a third party may act as a mediator, a negotiator or an arbitrator (see Annex III). Such a person is usually recognised as having some leadership role within their community. Typically, these people are men. It is also important to note that it is not uncommon for a third party to take on multiple leadership roles within their community. For example, a traditional elder could also have been a former village administrator, and, given his knowledge of customs, may also act as a social lawyer.

The greatest number of those listed were found in Shan and the fewest in Rakhine.

In Shan in particular, and to a limited extent in Kachin, various people were identified by their communities as being influential, and as people who could be relied on or from whom local people could seek help.<sup>52</sup> They were people who take on multiple leadership roles within their communities, and who have links or access to various sources of influence and power. This suggests that a person-centred social and political structure continues to be relevant. Some of the main characteristics common to these people, and which position them as having the ability to help those seeking access to justice, are that they have: (i) Myanmar language skills, enabling them to communicate with government officials; (ii) some level of education; (iii) connections to sources of authority; and (iv) certain inherited qualities, or inherent characteristics such as goodness.

*In summary, a wide range of third parties are involved in local dispute resolution. Those situated below the township level were the most prominent in settling respondents' day-to-day problems. Those who exercise authority over a geographic area generally played a more significant role than those within other spheres of influence. In Shan, Dagyis (where they existed) generally exercised more authority over their communities and were more involved in settling day-to-day problems than were local administrators.*

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52 UNDP Access to Justice and Informal Justice Systems Research, Shan State.



# CONCLUSIONS AND KEY RECOMMENDATIONS

Photo: Women Affairs Federation Office and a pre-school share a building in Hsishang, Shan State

Three key concepts fundamental to good governance provided the context for this study of access to justice: the legitimacy of authority; public trust in the legitimacy and exercise of judicial authority; and the rule of law, including accountability.

Public trust in the legitimacy of the justice system is linked to shared values in society. The experiences of people in Rakhine, Kachin and Shan who participated in this study suggest that they ascribe to a notion of shared values that is based in human rights, particularly substantive equality, non-discrimination, and the right to equal and just treatment under the law. They also indicate that public confidence and trust in the justice system is needed to ensure the public's participation in the administration of justice, including the ability of people to seek legal redress and access effective formal dispute resolution mechanisms, as well as to hold public officials accountable for their actions. The study cast light on the extent to which they expected such values would underpin their own access to justice and be evident in judicial processes and outcomes.

On this basis, it appears that public trust in the formal justice system is low. This appears to be why most people involved in this study preferred to seek access to justice locally and through informal channels.

Respondents identified the most common types of dispute as concerning: debt owed by others; land; problems obtaining civil documentation; and bribery, corruption or other abuse of state authority. The first three of these were of greatest concern to people in relation to their efforts to gain access to justice and their expectations of fair outcomes of judicial processes, whether formal or informal.

Significantly, even though disputes were most commonly pursued at a local level, usually involved trusted others and often proceeded

with the assistance of independent (non-state) third parties, the great majority remained unresolved.

These overall findings give rise to key recommendations that, together:

- Focus on the areas in which disputes most commonly occur and people have priority concerns;
- Seek to address the evident deficit of public trust in the formal justice system to resolve such concerns;
- Seek to strengthen access to justice by ensuring the justice system at all levels functions in accordance with the rule of law and the principle of public accountability, and reflects shared values based in human rights.

These recommendations are clustered in relation to each of the three main research questions, and identify key priority areas that are critical in order to assist rule of law stakeholders in Myanmar to improve the quality of justice dispensation and inform the overall justice sector reform process. However, they are far from being an exhaustive list, and are limited to information gleaned from the survey results.

Within this context, as a part of its development assistance in the rule of law sector, UNDP looks forward to developing additional evidence-based recommendations and collaborate with the Government and other national stakeholders in order to address deficits in how formal and informal justice systems currently operate, to promote ways to strengthen overall adherence to rule of law principles and contribute to sector-wide strategy and a reform action plan for the entire justice sector.

Overall, the research suggests that efforts to increase access to justice in Myanmar should

maintain a focus on the legal and rights issues of highest concern to the most vulnerable populations in Myanmar, even though many of them do not see these issues from an access to justice perspective. Reforming existing laws and policies to ensure that people are afforded due process in both civil and criminal areas of justice, as well as in administrative procedures, can strengthen the State's recognition of the right of all people to access justice equitably. Legal and policy reform is therefore as important as other strategies aimed at advancing rights-based administrative law pathways for the pursuit of claims and the settlement of disputes.

## 1. How do people seek access to justice?

Respondents' perspectives on justice and their reported experiences of disputes and dispute resolution cast light, first of all, on why they sought access to justice. It would appear that they were motivated, at least in part, by their adherence to such values as equality, fairness and accountability. Typically, people sought access to justice because they perceived themselves to be victims of inequality or discriminatory treatment and/or they perceived a lack of accountability by public officials.

Among people who had been involved in a dispute, those in Rakhine were significantly more likely than others to have been involved in a dispute over debt owed to them. People in Rakhine (in particular, Muslims) were also more likely than others to have had problems obtaining birth and identity documentation. Those belonging to ethnic or religious minority groups in Shan and Kachin were also more likely than others to experience such problems. These findings signify higher levels of discrimination against vulnerable and minority groups in all three states, and low levels of public ac-

countability. However, the proportion of disputes about land did not vary significantly state by state.

Although disputes over the owing of debt are widespread, and typically between individuals, the non-payment of debt is probably underreported. If this is so, it may well be a factor in perpetuating local quarrels and debt-related disputes. A key issue related to debt – and surely its non-payment – is the cycles of indebtedness caused by a lack of financial services to the poor, as observed in Shan.

The majority of land-related disputes reported also appear to be in the nature of private quarrels, which people attempt to settle informally. In Shan and Kachin, the legal framework for land ownership, use and administration contributed to land-related disputes, as did historic land confiscation, formalisation of the land market, increasing land prices and inconsistent administration of authority. Such factors clearly have significant consequences for individual citizens and communities. Attempts to address them commonly take place in informal contexts and at low levels of local administration. High-level factors that contribute to overall disquiet and disputes over land can and should be addressed at the Union level in the interests of justice, as well as communal harmony and cohesion.

Respondents explained that they perceive that justice sector institutions employ officials who tend to abuse their authority, and that corruption is quite prevalent. Kachin and Shan residents also reported that drug trafficking and addiction exacerbates justice sector corruption in their regions, and that they believe authorities are often complicit in the drug trade. The problems associated with the increasing population of persons who use drugs are not limited to the justice sector, and are undermining social and family cohesion. Kachin and Shan residents

consider drug trafficking and abuse issues as priority concerns.

Gender-based violence against women is of significant concern. It is suspected to be widespread but it often goes unreported. Abused and vulnerable women face significant difficulties in accessing help and securing justice. It appears that the perpetrators of violence against women are only rarely held to account in the formal justice system (although perpetrators of rape are prosecuted and punished when they are taken to court). While social and cultural norms, particularly patriarchal beliefs, regarding the value, status and rights of women go unchallenged, women remain vulnerable to abuse and unprotected under the law.

With low levels of trust in the formal justice system, most people sought access to justice through informal channels. They favoured seeking assistance, preferred disputes to be settled locally and valued receiving fair treatment above a favourable outcome. However, attempts to settle matters locally via direct negotiations were not often successful.

Officials in the criminal justice system were rarely reported as being involved as third parties. A majority of people approached local, non-state third parties to assist, and cultural and social considerations characterised the outcomes. Sixty percent of priority disputes remained unresolved. State officials and public service providers were implicated in a significant proportion of justice-related concerns, and these matters were less likely to be resolved than others.

Respondents' choice of pathways to resolve their disputes and concerns was influenced by personal, social, cultural and systemic factors. Most notably, large majorities perceived that their concerns would not be heeded because of differential treatment in Myanmar society

that particularly favours those with wealth, education and connections; this perception can likely be linked to the underreporting of incidents (particularly in respect of violence against women).

Perceived discrimination is likely to account for some people's reluctance to seek assistance to resolve their priority concerns. Some did not know where to turn for help. Many who did not seek access to justice did not wish to disturb personal relationships and social cohesion by pursuing their matter.

Various efforts are required to address the problem of differential treatment of citizens on the basis of ethnicity, religion, sex and/or vulnerability. Efforts aimed at overcoming patriarchal and discriminatory attitudes (which undermine the right to access justice), initiatives focused on raising awareness of substantive equality, and strategies targeted at increasing the fairness and effectiveness of adjudicative processes and outcomes, and enforcing them, will all be important.

## ACCESS TO JUSTICE: KEY RECOMMENDATIONS

### Regarding the formal administration of justice:

- Ensure that all formal justice sector actors, including local administrators, are sufficiently equipped to carry out their functions, including by providing the necessary training on: substantive equality; gender sensitivity and gender equality; rule of law principles; fair trial and due process; accountability; mediation principles; and international standards related to the administration of justice.
- Establish a clear policy on the status of customary law and its relationship to the formal justice system and disseminate it publicly at all levels.
- Clarify the legal framework for citizenship and residency to bring it in line with Myanmar's Constitution and obligations under international human rights treaties and instruments.
- Establish an independent mechanism to ensure that civil registration is equitable, rights based and enforceable.

### Regarding transparency and public information:

- Publicise in an accessible manner all relevant official fee schedules and processing times for various government services at the township and ward/village tract administration offices.
- Make available information relating to procedures for obtaining civil documentation in ethnic languages.
- Disseminate information on the functioning of the criminal justice system.
- Consider and pilot a court monitoring project to better understand the functioning of the formal justice system.
- Consider and pilot a court monitoring project to better understand how legal aid will best serve court clients.

### Regarding gender and legal protection of women:

- Ensure that all formal justice sector actors receive appropriate training and sensitisation on gender equality and highlight in particular the legal protection of women and other vulnerable groups.
- Reinforce that domestic violence/gender-based violence complaints can only be withdrawn when it is in the best interests of



justice, through training, rules revision and legal amendments, to prosecutors, judicial officers and law enforcement officials.

- Provide training and sensitisation on gender equality and legal protection of women, and hold forums to bring together government/justice officials and community members in order to discuss legal protection of women, including gender-based violence.
- Consider and pilot the introduction of judicial protective orders for cases of domestic violence.

#### **Regarding poverty and debt:**

- Explore judicial remedies to allow minor money claims to be adjudicated at lowcost, swiftly and in a manner that reduces illegal and unfair lending practices.
- Expand financial services that are responsive to the needs of the poor.

#### **Regarding land:**

- Build on, and further efforts at, developing a centralised land registry that equally recognises ancestral/traditional/customary land tenure.
- Strengthen administrative decision-making on farmland management, including mechanisms for appealing decisions made by civil servants/government officials and with final recourse to the courts.
- Ensure that information relating to the process and procedures relating to the return of lands previously seized by the State are disseminated in a public, accessible and transparent manner.
- Regarding the return/redistribution of previously confiscated land, explore localised mechanisms that involve full and informed participation by all affected parties, to enable the specificities of each situation to be fairly considered.

#### **Regarding drugs:**

- As a policy decision, prioritise a health, rather than law enforcement, approach to treatment of drug users.
- As a policy priority, establish drug rehabilitation centres in appropriate locations to ensure that drug users are able to access and receive the necessary medical attention and treatment.

## 2. What are people's perceptions of, and trust and confidence in, the formal justice system?

There appear to be low levels of trust and confidence in the formal justice system. Few people resorted to the formal system as a pathway to justice. Officials in the formal justice system were rarely involved in dispute settlement at local levels.

People in all three states perceived judges, law officers and the police to be competent, but did not seem to have a lot of confidence in them. Perceptions that these officials do not share the values of "ordinary people", and widespread discriminatory actions, appear to explain people's reluctance to be involved with the formal justice system. People are not confident of receiving non-discriminatory and fair treatment in the justice system, nor are they confident that it will deliver just outcomes.

There seem to be particularly low levels of public confidence in the police. However, although less than one third of respondents believed that judges and law officers are aligned with com-

munity priorities, a slightly higher minority believed this of the police.

In contrast, people perceived that community leaders were in alignment with community priorities and invested in the same shared values. However, believed that community leaders lack the necessary training and resources to carry out their responsibilities.

Enhancing public trust in the justice system is a priority for those in the justice sector. Policies and strategies directed towards promoting shared values (such as substantive equality, including gender equality, before the law; non-discrimination; respect for others; fairness; anti-corruption, etc.) and enhancing these values at all levels throughout the justice sector will be paramount. Strategies targeted at increasing the responsiveness of the formal justice sector will be crucial. Policies and strategies to increase transparency, independence and fairness in the adjudication process will also be important.

## ENHANCING TRUST AND CONFIDENCE: KEY RECOMMENDATIONS

### Regarding accountability and combating corruption:

- Increase the accountability and transparency of all government ministries/departments/agencies by making publicly accessible information available on internal oversight structures, as well as mechanisms and processes for public complaints or grievance redressal.
- Increase trust in, and citizen satisfaction with, the formal justice and administrative law systems through improved decision-making skills and enhanced procedures that allow for people to: (a) be heard while their cases are adjudicated either in court or at a government agency; and (b) appeal decisions made through quasi-judicial administrative offices within the Government.
- Ensure the independence and accountability of the judiciary in line with international standards, including by ensuring financial autonomy and adequate resources, objective and transparent appointment criteria, judicial accountability and security of tenure.
- Develop and implement a comprehensive plan for police reform, encompassing and sequencing the interrelated areas of: law and policy framework; oversight and accountability mechanisms; recruitment and training; and infrastructure and facilities.
- As a priority, increase the accountability and transparency of all Border Guard Police operations by making publicly accessible information available on: the command and oversight structure; role and functions; standard operating procedures; locations of outposts; and recruitment and training policies.

### Regarding substantive equality and non-discrimination:

- Ensure that all justice sector officials and public servants receive training on substantive equality, non-discriminatory treatment and respect for diversity, prior to commencing duties.
- Ensure the integration of continuous professional development, especially on substantive equality, non-discriminatory treatment and respect for diversity (at region/state capital

level) as part of the professional duties and responsibilities of all justice sector officials and public servants.

- Provide training on fair trials, including equality before the law and non-discrimination, and hold forums to bring together government/justice officials and community members in order to discuss strengthening fair trial rights in Myanmar.

**Regarding social development and cohesion:**

- Develop a civic education and public awareness campaign encompassing topics on the Myanmar State and society, which will also serve to foster the development of a national identity that embraces the country's cultural, ethnic and religious diversity, and that promotes equality, fairness, respect and tolerance.
- Ensure that a national civic education curriculum is taught in schools to all children at an appropriate age and in an appropriate ethnic language.

### 3. What informal justice processes exist in the local area, and how do they operate?

There is a wide range of pathways used for settling private disputes outside the formal justice system. Respondents' general preference for using non-formal mechanisms to accessing the formal justice system underscores the relative legitimacy of non-formal pathways. This is despite the fact that some non-formal mechanisms adhere to patriarchal norms, which have significant impact on access to justice for women in particular.

It will be of critical significance to encourage and support those who play roles in the non-formal judicial system to adhere to the principles of substantive and gender equality, non-discrimination and equal treatment under the law in their treatment of those in pursuit of justice at local and community levels.

#### INFORMAL JUSTICE PROCESSES: KEY RECOMMENDATIONS

##### Regarding customary law:

- Undertake further targeted research – using participatory action research methodologies – on customary justice systems to determine engagement strategies with such systems.

##### Regarding professional development:

- Ensure that incumbent local administrators are sufficiently equipped to carry out their functions, including by providing the necessary training on: substantive equality; gender sensitivity and gender equality; non-discrimination; rule of law principles; due process; accountability; mediation principles; etc.
- Provide training and sensitisation on gender and substantive equality, targeting in particular those who play a role in informal dispute settlement (e.g. CLA representatives, religious leaders, community leaders, etc.)
- Continue dialogue skills training for local administrators, and broaden it to include community leaders.

## ANNEX I: METHODOLOGY

The research was conducted in 16 townships, in Rakhine (5), Kachin (4) and Shan (7) States. In each township, one ward and one village tract, or two wards/village tracts, were purposively selected in close consultation with GAD officials. The study also included two internally displaced persons (IDP) camps in Kachin.

Field research was carried out between October 2015 and July 2016.<sup>53</sup> The study adopted mixed-methods: a structured interview questionnaire

was administered to 1,252 households, which was supplemented by focus group discussions involving 453 participants at the ward/village tract level and 258 key informant interviews. In parallel, two sets of semi-structured interviews were carried out with: (i) judges, law officers, police officers and GAD officials at township and district levels; and (ii) representatives of culture and literature associations (CLAs) at township and state levels (Table AI.1).

Table AI.1 Sample Numbers by State

State	Household Structured Interviews		Focus Group Discussions		In-depth Interviews		Semi-structured Interviews		
	F	M	F	M	F	M	CLA Representatives	State Officials	
RAKHINE	166	166	82	84	8	41	--	26	
KACHIN	207	193	65	66	28	52	28	54	
SHAN	260	260	81	75	39	90	39	82	
TOTAL	(incl. IDPs)	633	619	228	225	75	183	67	162
	(excl. IDPs)	576	576	215	213	71	178		

53 October-November 2015 in Rakhine; January 2016 in Kachin; and June-July 2016 in Shan.

All research instruments were developed in English and translated into Myanmar. The household structured interview questionnaire was shared with an advisory group for comments and feedback, which were incorporated where relevant and applicable. Translation of the structured interview questionnaire into Myanmar took place alongside a series of discussions with Myanmar colleagues to ensure clarity of language, ideas and concepts. The instrument was revised following a pre-test.

International consultants led the fieldwork and carried out interviews with state officials. A Myanmar research organisation, Enlightened Myanmar Research Foundation (EMReF), which had some prior experience on rule of law/access to justice/plural legal systems stud-

ies, was contracted by UNDP to carry out research at the ward and village levels. Interpreters were hired and trained to assist with field research.

Research ethics, including voluntary participation and informed consent, confidentiality, safety, neutrality and objectivity, as well as conflict sensitivity and do no harm, were maintained throughout the study.

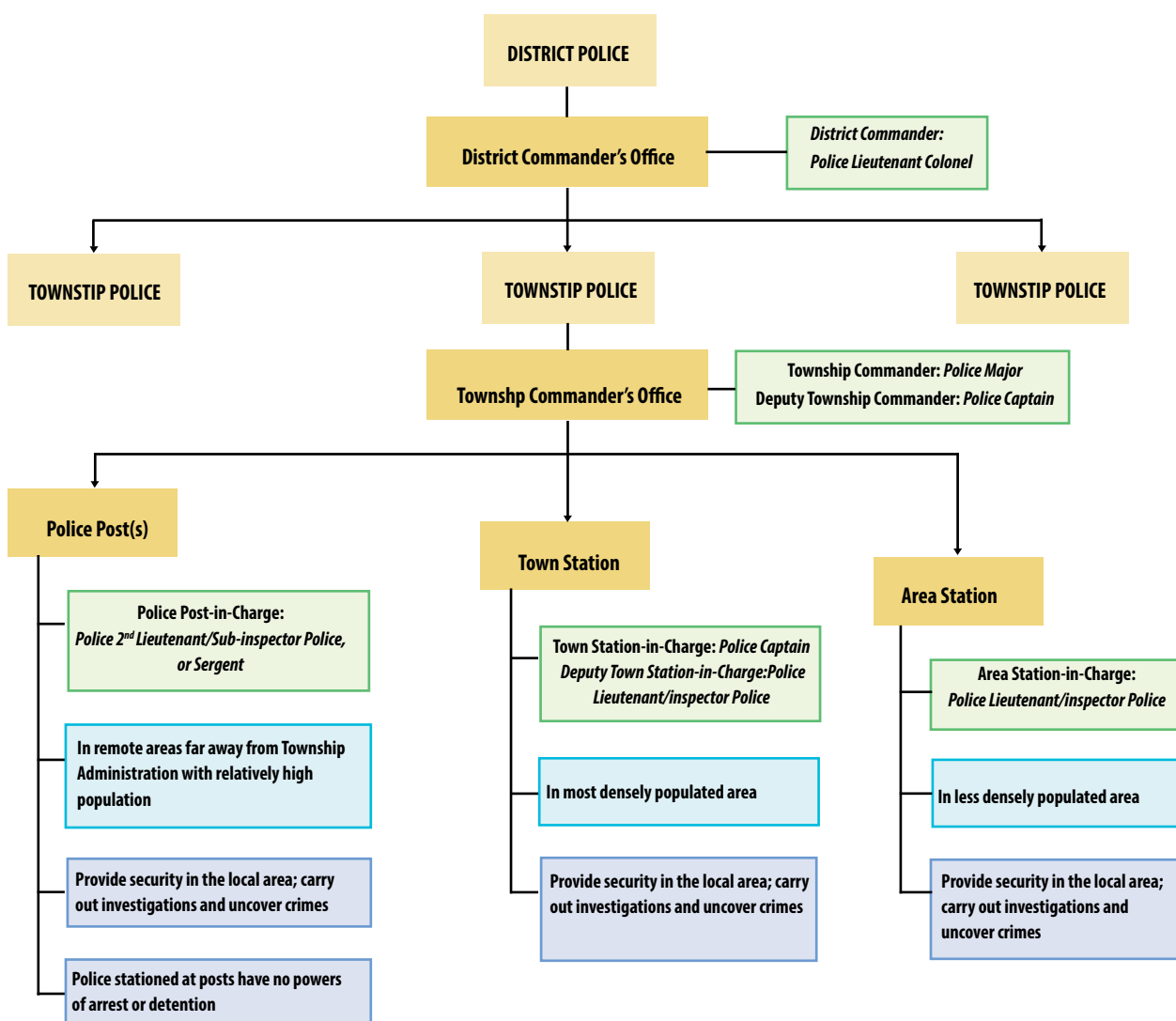
The findings describe only the study sample. Statistically relevant comparisons cannot be made among respondents, and the findings cannot be generalised to any wider population. Further research challenges and limitations specific to each state are detailed in the respective state reports.

## ANNEX II: KEY INSTITUTIONS AND PROCESSES IN THE CRIMINAL JUSTICE SYSTEM

At district and township levels, the Myanmar Police Force (MPF) has three main departments: Administration, responsible for management and staffing issues, and disciplinary matters; Crime Records, which reviews cases and supervises prosecutions; and Quartermaster's Department, which manages supplies and logistics.

On a day-to-day basis, basic policing is carried out at stations and posts below the township level. The two main responsibilities of officers at stations and posts are to provide security in the local area and to carry out investigations and uncover crimes (see Figure All.1).

Figure All.1 MPF Policing Structure at Township Level





Police activity in relation to crime and policing is broadly grouped into three categories.

The first category of 10 “serious offences” includes murder, armed robbery, robbery, kidnapping, rape, burglary, animal theft, treason, unlawful association and offences under the 1878 Arms Act.

The second category of “other offences” includes theft (of public or state property, of vehicles, pick-pocketing, etc.), theft resulting in physical injury, and assault. It also includes a separate sub-category of “other” crimes that includes offences under various special laws, such as the 2012 Export and Import Law, the 2005 Anti-Trafficking in Persons Law, and the 1992 Forest Law, among others.

The third category of “preventive measures” involves activities undertaken by the township police pursuant to provisions under the 1993 Narcotic Drugs and Psychotropic Substances Law,<sup>54</sup> the 1945 Police Act,<sup>55</sup> the 1950 Emergency Provisions Act, the 1961 Restriction of Movement and Probation of Habitual Offenders Law,<sup>56</sup> etc., and extends to monitoring of activities such as gambling, alcohol consumption and prostitution.

In the event that the police learn of an incident involving a cognizable offence,<sup>57</sup> they are bound to attend at the crime scene. Although the law stipulates the filing of a First Information Report (FIR) upon receipt of information concerning a cognizable offence, it also requires, in reality, an informant who is willing to formally report the incident.<sup>58</sup>

The filing of an FIR puts in motion the criminal justice system’s response to the particular incident. Once started, the formal criminal justice process cannot be stopped except through application by a law officer and with the consent of the court.<sup>59</sup>

Once an FIR is filed, the police begin investigations into the incident,<sup>60</sup> which may include the arrest and/or remand of a suspect.<sup>61</sup> Investigations are generally, though not necessarily, conducted by officers stationed where the FIR is lodged. If an FIR is filed at a police post, it must be sent to the nearest police station, as officers stationed at police posts are not authorised with powers of arrest or detention.

Following investigations, the case file is typically sent to the relevant law office for confidential legal advice seven days before the end of an accused person’s remand period. Crimes at-

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54 UNDP Access to Justice and Informal Justice Systems Research, Kachin State and Shan State.

55 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

56 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.

57 1898 Code of Criminal Procedure (CrPC), s. 4(f): “‘cognizable offence’ means an offence for ... which a police officer may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant”.

58 As above, s. 154: “Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced in writing by him [or her] or under his [or her] direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the President of the Union may prescribe in this behalf”.

59 As above, s. 494: “Any [law officer] may with the consent of the Court ... before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he [or she] is tried ...”

60 As above, ss. 156, 157 and 165.

61 As above, ss. 54 and 344.

tracting a prison term of up to seven years are handled at the township level, whereas those with a sentence greater than seven-years' imprisonment attached are dealt with at the district level.

When the brief – including the relevant charges and supporting evidence – is in order, it is submitted to either the Township Commander or District Commander (depending on the gravity of the punishment for the alleged offence) for initiation of proceedings in court.<sup>62</sup> As a general rule, such judicial inquiry takes place within the township or district where the alleged offence occurred.<sup>63</sup>

When a judge takes cognizance of an alleged offence, he/she is empowered to determine whether the matter is a warrant or summons case<sup>64</sup> and whether it should proceed summarily.<sup>65</sup>

After consideration of all the evidence (including examination and cross-examination of any witnesses) that may be produced for trial during the committal hearing,<sup>66</sup> the judge may: (i) discharge the accused if he/she determines there to be insufficient grounds for committing the person for trial;<sup>67</sup> or (ii) commit the accused for

trial (and formally frame charges against him/her in a warrant case).<sup>68</sup>

During trial, the law officer acts on behalf of the State and conducts the prosecution. Unless otherwise provided – for example, in the case of “special laws” such as the 1908 Unlawful Associations Act, the 1878 Arms Act, the 2012 Export and Import Law and the 1947 Public Property Protection Law – the burden of proof is generally on the prosecution to prove guilt.<sup>69</sup> The accused/defendant may or may not be represented by a lawyer, unless he/she is charged with an offence that is punishable by death. Discussions with judges and law officers suggest that relatively high proportions of defendants are unrepresented during trial at both township and district levels.

Following the trial process, the judge makes a finding of guilt or not of the defendant, who is then either sentenced or acquitted. This typically concludes the criminal justice process in relation to a particular incident involving a criminal offence.

Cases may sometimes, however, be subject to revision or appeal.<sup>70</sup> Figure All.2 indicates some of the main instances when this might occur.

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62 As above, s. 170:“(1) If, upon investigation ... it appears to the officer in charge of the police station or the police officer making the investigation that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a [judge] empowered to take cognizance of the offence upon a police report and to try the accused or commit him [or her] for trial or, if the offence is bailable and the accused is able to give security, shall take security from him [or her] for his [or her] appearance before such [judge] on a day fixed and for his [or her] attendance from day to day before such [judge] until otherwise directed.”

63 As above, s. 177.

64 As above, s. 204.

Warrant case: “[A] case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months” (CrPC, s. 4(1)(w)). See also CrPC, ss. 251 to 259.

Summons case: “[A] case relating to an offence, and not being a warrant case” (CrPC, s. 4(1)(v)). See also CrPC, ss. 241 to 250.

One procedural difference between a warrant and a summons case is that, in the latter, an accused may be convicted following an admission of guilt without having charges formally framed against him/her (CrPC, ss. 242 and 254).

65 CrPC, ss. 260 to 265. The maximum prison sentence that may be imposed for a summary trial is six months (CrPC, s. 262(2)).

66 As above, s. 204.

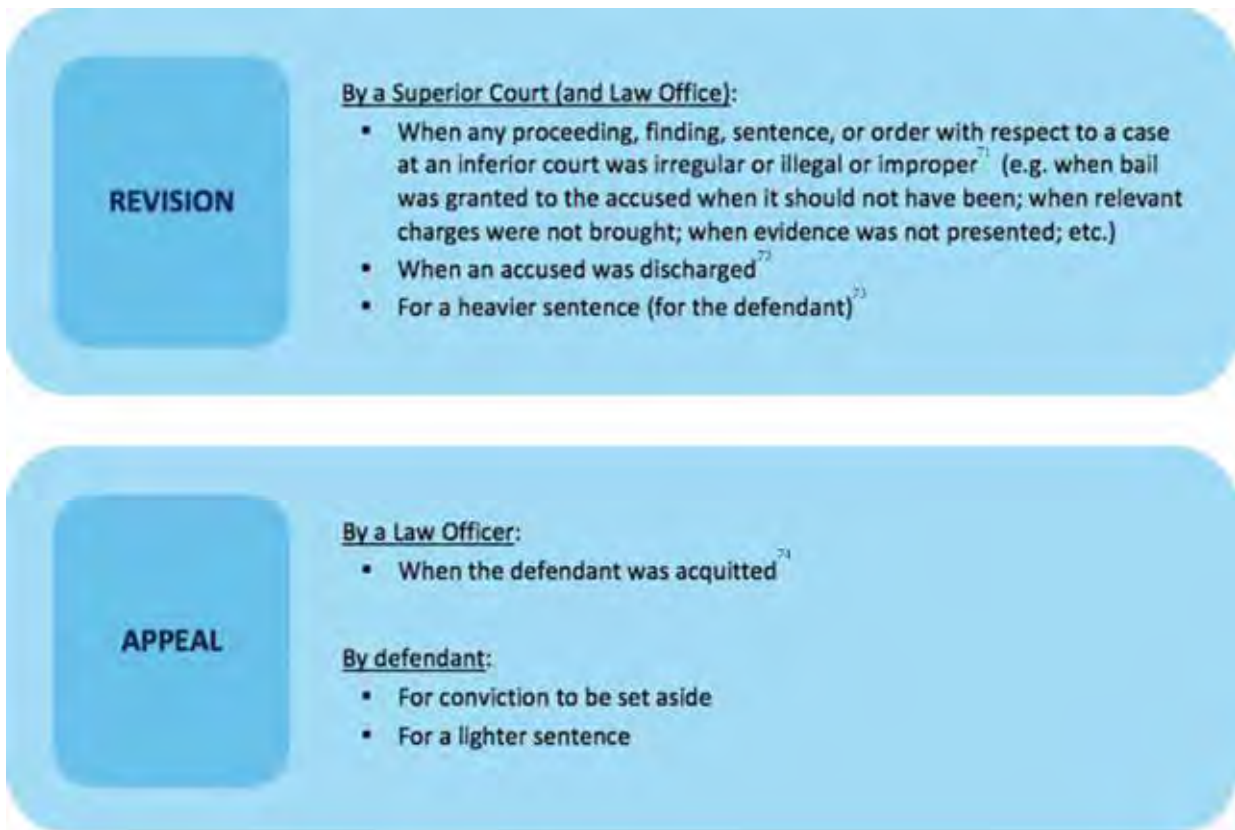
67 As above, s. 209.

68 As above, s. 210.

69 1872 Evidence Act, s. 101.

70 CrPC, ss. 404 to 442.

Figure All.2 Revisions and Appeals



## General Administration Department

The GAD provides various public services at the township level, including acting as a one-stop-shop on matters concerning government.<sup>75</sup> GAD officials, including administrators, play various roles in dispute settlement processes.

Administrators have a quasi-judicial role in dealing with land-related disputes, particularly as Chairpersons of Farmland Management

Committees pursuant to the 2012 Farmland Law.<sup>76</sup> They also act as intermediaries between government departments and local community members.<sup>77</sup> This second role involves elements of mediation and negotiation. They are also likely to be called upon to deal with “wrong” or “arbitrary” decisions by various government departments.<sup>78</sup> This last role would merit further research.

71 As above, s. 435.

72 As above, s. 436.

73 As above, s. 439.

74 As above, s. 417.

75 UNDP Access to Justice and Informal Justice Systems Research, Kachin State and Shan State.

76 UNDP Access to Justice and Informal Justice Systems Research, Shan State.

77 UNDP Access to Justice and Informal Justice Systems Research, Rakhine State.

78 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.

## ANNEX III: THE ROLE OF (NON-STATE) THIRD PARTIES IN DISPUTE RESOLUTION

Where (non-state) third parties are involved in dispute settlement, they generally have a decision-making role due to their authority or responsibility as recognised in law or in custom. For instance, local administrators help settle farmland-related disputes as Chairperson of the local Farmland Management Committee, and a *da gyi* helps settle cases of adultery within his community (see Part III).

Non-state third parties also act as mediators in disputes to help opposing parties negotiate compensation and mutually acceptable outcomes. In Kachin, some third-parties involved in dispute settlement described *naa leh hmu* (နားလည်မှု) literally, “understanding”<sup>79</sup> as a concept or principle underlying *lu hmu yeh* (လူမှုရေး: literally, “social affairs”) processes – the accounting for “social” considerations in dispute

settlement to achieve a satisfactory result for all parties.<sup>80</sup> This second role, particularly when undertaken by respected community leaders, is sometimes an extension of the representation or advocacy role (relating to direct negotiations) of third-party actors.

Certain third parties play a facilitation role, acting as intermediaries between the aggrieved party and someone who is able to exercise a decision-making function (e.g. a fight is reported to a 10 HHH, who in turn informs the local administrator who settles the dispute). In some instances, specific actions are required before a party is able to exercise certain rights or access particular services (e.g. where letters of recommendation from local administrators are required for certain groups of people before they are able to travel).

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79 This may be understood as coming to a common understanding.

80 UNDP Access to Justice and Informal Justice Systems Research, Kachin State.






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