

**UNDP Access to Justice and
Informal Justice Systems Research**

SHAN STATE



*Empowered lives.
Resilient nations.*



***One Acre of Land is
Better Than Nothing***

Donor Partners:

The Access to Justice and Informal Justice Systems Research Project was made possible with financial support from the Governments of Australia, Finland, Sweden and the United Kingdom.



Disclaimer:

The views expressed in this publication are those of the author, and do not necessarily represent the views of the United Nations, including UNDP or their member States.

UNDP partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone.

On the ground in more than 170 countries and territories, we offer global perspective and local insight to help empower lives and build resilient nations.

Copyright © UNDP 2017

Photo credits: UNDP Myanmar, Enlightened Myanmar Research Foundation (EMReF)



*Empowered lives.
Resilient nations.*

**UNDP Access to Justice and
Informal Justice Systems Research**

SHAN STATE

***One Acre of Land is
Better Than Nothing***

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 |
| CSC | Citizenship Scrutiny Card |
| DNK | Do Not Know |
| FMC | Farmland Management Committee (established pursuant to the 2012 Farmland Law) |
| GAD | General Administration Department, Ministry of Home Affairs |
| MPF | Myanmar Police Force |
| MWAF | Myanmar Women's Affairs Federation |
| NLD | National League for Democracy |
| RTA | Refuse To Answer |
| TBC | Township Border Committee |
| TNLA | Ta'ang National Liberation Army |
| UNDP | United Nations Development Programme |
| USDP | Union Solidarity and Development Party |
| VFV Law | 2012 Vacant, Fallow and Virgin Land Law |
| VTA | Village Tract Administrator |
| W/VTA | Ward/Village Tract Administrator |

LIST OF FIGURES

| | |
|---------------|---|
| Figure 1.1 | Legitimacy and Trust |
| Figure 2.1 | Levels of Education |
| Figure 2.1(a) | Levels of Education by Sex |
| Figure 2.2 | Monthly Household Income Levels |
| Figure 2.3 | Mass Media Exposure |
| Figure 2.3(a) | Access to Information |
| Figure 3.1 | Social Trust: Trustworthiness and Fairness |
| Figure 3.2 | Social Trust: Trust in Others |
| Figure 3.3 | Treatment Factors |
| Figure 3.4 | Words in Daily Conversation |
| Figure 4.1 | Types of Disputes |
| Figure 4.2 | Incidence of Disputes |
| Figure 4.3 | Priority Concerns About Justice |
| Figure 5.1 | Attempts at Settlement of Priority Concerns |
| Figure 6.1 | Perceptions of Judges |
| Figure 6.2 | Perceptions of Law Officers |
| Figure 6.3 | Perceptions of the Police |
| Figure 6.4 | Perceptions of Community Leaders |
| Figure 6.5 | Perceptions of Unequal Treatment |
| Figure 6.6 | Attitudes to Accountability |

Annex II Figures

| | |
|---------------|--|
| Figure 2.1(b) | Myanmar Language Literacy by Sex |
| Figure 2.2(a) | Selected Household Assets by Income Level |
| Figure 2.3(b) | Access to Information by Sex |
| Figure 2.3(c) | Languages |
| Figure 3.1(a) | Social Trust: Trustworthiness and Fairness by Sex |
| Figure 3.2(a) | Social Trust: Trust in Others by Sex |
| Figure 3.4(a) | Words in Daily Conversation by Sex |
| Figure 5.2(a) | Dispute Settlement Preferences – Hypothetical Scenario 1 |
| Figure 5.2(b) | Dispute Settlement Preferences – Hypothetical Scenario 2 |
| Figure 5.2(c) | Dispute Settlement Preferences – Hypothetical Scenario 3 |
| Figure 5.2(d) | Dispute Settlement Preferences – Hypothetical Scenario 4 |
| Figure 5.2(e) | Dispute Settlement Preferences – Hypothetical Scenario 5 |
| Figure 5.2(f) | Dispute Settlement Preferences – Hypothetical Scenario 6 |
| Figure 6.6(a) | Barriers to Accountability |
| Figure 6.6(b) | Attitudes to Accountability by Sex |

Annex III Figures

| | |
|-----------|--|
| Figure A1 | MPF Policing Structure at Township Level |
| Figure A2 | Criminal Justice Process |
| Figure A3 | Revisions and Appeals |

LIST OF TABLES

| | |
|-----------|---|
| Table 2.1 | Respondents by Ethnicity and Sex |
| Table 2.2 | Respondents by Ethnicity and Religion |
| Table 2.3 | Levels of Education by Ethnicity |
| Table 2.4 | Myanmar Language Literacy by Ethnicity |
| Table 3.1 | Perceptions of Justice |
| Table 3.2 | Perceptions of Law |
| Table 5.1 | Third-Party Actors: Potential Roles in Dispute Settlement |
| Table 6.1 | Attitudes Towards the Justice System |
| Table 6.2 | Trust in Judicial Actors |

Annex I Tables

| | |
|---------|-------------|
| Table 1 | Sample Size |
|---------|-------------|

Annex II Tables

| | |
|--------------|--|
| Table 2.5 | Monthly Household Income Levels by Ethnicity |
| Table 2.6 | Costs to Access Township Services |
| Table 3.1(a) | Perceptions of Justice by Sex |
| Table 3.1(b) | Perceptions of Justice by Urban/Rural Location |
| Table 3.1(c) | Perceptions of Justice by Religion |
| Table 6.3 | Attitudes to Accountability by Ethnicity |

CONTENTS

| | |
|---|-----------|
| Abbreviations and Acronyms | iii |
| List of Figures | iv |
| List of Tables | v |
| EXECUTIVE SUMMARY | 6 |
| CHAPTER 1 INTRODUCTION | 10 |
| BACKGROUND TO THE RESEARCH | 10 |
| RESEARCH PURPOSE AND METHODOLOGY | 10 |
| CONCEPTUAL OVERVIEW | 11 |
| CHAPTER 2 CHARACTERISTICS OF STUDY SITES AND RESPONDENTS | 14 |
| OVERVIEW OF STUDY SITES | 14 |
| Socio-Economic Observations | 14 |
| Cultural Observations | 14 |
| Communications | 14 |
| Security Context | 14 |
| RESEARCH RESPONDENTS | 15 |
| Cultural Characteristics | 15 |
| Education Levels and Myanmar Language Literacy | 16 |
| Persons with Disability | 18 |
| Income and Household Assets | 18 |
| Mass Media Exposure and Access to Information | 19 |
| Access to Services | 21 |
| Main Sources of Support | 21 |
| CHAPTER 3 PERCEPTIONS OF JUSTICE AND LAW | 23 |
| SOCIAL TRUST | 23 |
| PERCEPTIONS OF JUSTICE | 24 |
| PERCEPTIONS OF LAW | 27 |
| Legal Awareness | 29 |
| CHAPTER 4 DISPUTES AND CONCERNS ABOUT JUSTICE | 31 |
| INDIVIDUAL/HOUSEHOLD LEVEL | 31 |
| Types of Disputes | 31 |
| Incidence of Disputes | 32 |
| Priority Concerns About Justice | 34 |
| THEMATIC ISSUES | 35 |
| Land, Property and Housing | 35 |
| Drugs | 42 |
| Legal Protection of Women and Vulnerable Groups | 45 |
| Discrimination | 49 |
| Loans and Debts | 51 |
| Public Services: Access and Regulation | 56 |
| FORMAL JUSTICE SYSTEM | 59 |
| Land | 59 |

| | |
|---|-----------|
| Drugs | 59 |
| Legal Protection of Women and Vulnerable Groups | 60 |
| Traffic Accidents | 61 |
| Collective Savings | 61 |
| 1945 Police Act | 61 |
| Unlawful Association | 62 |
| CHAPTER 5 DISPUTE SETTLEMENT TRAJECTORIES | 63 |
| DIRECT NEGOTIATIONS AND THIRD-PARTY ASSISTANCE | 63 |
| Third Parties Involved in Dispute Resolution | 65 |
| CRIMINAL JUSTICE SYSTEM | 73 |
| Police | 73 |
| Legal Representation | 74 |
| GENERAL ADMINISTRATION DEPARTMENT | 74 |
| Land-Related Disputes | 74 |
| One-Stop-Shops | 75 |
| CHAPTER 6 ATTITUDES TOWARDS THE JUSTICE SYSTEM AND JUDICIAL ACTORS | 77 |
| ATTITUDES TOWARDS THE JUSTICE SYSTEM | 77 |
| PERCEPTIONS OF JUDICIAL ACTORS | 78 |
| Judges | 78 |
| Law Officers | 79 |
| Police | 80 |
| Community Leaders | 81 |
| Public Trust in Judicial Actors | 81 |
| PERCEPTIONS OF UNEQUAL TREATMENT | 82 |
| ATTITUDES TO ACCOUNTABILITY | 83 |
| CHAPTER 7 CONCLUSIONS AND RECOMMENDATIONS | 87 |
| ACCESS TO JUSTICE | 87 |
| SUBSTANTIVE EQUALITY | 89 |
| ADMINISTRATIVE JUSTICE AND ACCOUNTABILITY | 92 |
| PUBLIC TRUST IN JUDICIAL AUTHORITY | 93 |
| ANNEX I METHODOLOGY | 96 |
| ANNEX II SUPPLEMENTARY FIGURES AND TABLES | 99 |
| ANNEX III KEY INSTITUTIONS AND PROCESSES IN THE CRIMINAL JUSTICE SYSTEM | 100 |

ACKNOWLEDGEMENTS

This report benefited from the contributions of many stakeholders. It was commissioned by UNDP, and conducted by Elaine Chan and Jessica So, independent consultants.

Field research was conducted in Shan State by Enlightened Myanmar Research Foundation with the assistance of Soe Myat Thu as field interpreter and translator of the reports.

UNDP acknowledges the essential support provided by the Union Attorney General's Office (UAGO), the Office of the Supreme Court of the Union (OSCU), the Ministry of Home Affairs, the General Administration Department (GAD) and the Myanmar Police Force.

Judges, law officers, police officers, ward/village tract administrators and GAD officials at township and district levels and representatives of culture and literature associations (CLAs) contributed significantly to the study.

UNDP would also like to thank the people of the following townships in Shan State; Lashio, Kutkai, Kengtung, Tachileik, Taunggyi, Loilem, Hsihseng who participated in the consultations with the research team and patiently provided all the information included in the report.

Gratitude goes to the UNDP Rule of Law team for its dedication over the past two years: Mascha Matthews (Programme Specialist); Simone Boneschi (Rule of Law Specialist); Paul Doila (Programme Analyst); Thet Mon Soe (Pro-

gramme Associate); Ugo Okoh (Programme Management Specialist); Zaw Min Naung (Field Officer); Hnin Marlar Htun (Programme Associate); Nway Nway Lwin (Rule of Law Officer); Natalie Matranga (Rule of Law Officer); Leo Twiggs (Rule of Law Officer); Zaw Lawt (Field Officer); and the UNDP field office in Shan State. Scott Ciment (UNDP Chief Technical Advisor on Rule of Law in Myanmar), Emma Morley (Team Leader, Democratic Governance) and Jessica Price (Programme Analyst, Democratic Governance) also provided valuable inputs to the research study.

The report was edited by Jenny Rouse.

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 Shan State", 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 citizens, including the most vulnerable and marginalised.

Finally, let me thank all the people in Shan State 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: Aye Thar Yar Vineyard near Taunggyi, Shan State

The United Nations Development Programme (UNDP) in Myanmar commissioned the access to justice and informal justice systems research in three locations: Rakhine, Kachin and Shan States, which includes specific attention to informal justice systems.

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?

The research methodology is outlined in Annex I. This report summarises the findings in Shan State.¹ It is important to note that the findings are indicative rather than representative, because of the sampling methodology, and cannot be generalised to any wider population.

Findings from this study are intended to help UNDP identify entry points for rule of law and access to justice programming.

The title "One Acre of Land is Better Than Nothing" comes from the response of an interviewee who settled a land dispute through an informal justice process, but received far less than he felt entitled to. Despite this, he felt satisfied by the outcome of his dispute because his expectations for fair and equal treatment were very low – a sentiment shared by a majority of the respondents who settled their disputes through an informal system.

The Introduction to this report (Chapter 1) 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 of police, judges, law officers and legal aid providers. As in all countries, 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.

Chapter 2 describes the study sites in Shan State and the demographic and socio-economic background of the respondents.² Chapters 3 to 6 present and analyse the research findings.

Chapter 3 provides the context within which respondents reported on the disputes they and their communities were involved in during the previous year. It begins by reporting on levels of social trust among respondents. Respondents in Shan demonstrated strong allegiance to family and community and tended to distrust "outsiders".

The chapter then examines perceptions of certain dimensions of justice and law. This provides some context to the study's enquiry into why and how people seek access to justice. The re-

¹ Study sites and respondents in Shan State 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.

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 does not include findings in relation to internally displaced respondents.

spondents clearly preferred disputes to be settled locally. Significant majorities agreed that men and women have equal value and equal responsibility for caring about culture and tradition, that procedural fairness is more important than obtaining a favourable outcome, that people are able to seek help, obtain a remedy and fair outcome following an injustice, and that everyone deserves equal care and concern by the government regardless of religion or ethnicity. However, they overwhelmingly cited wealth, and large majorities cited education and political connections, as the main factors that determine how well a person is treated in Myanmar society.

The respondents were, in general, not engaged with the formal justice system and more familiar with the police than with law officers, lawyers, courts and judges. Significant numbers of respondents did not know or misunderstood certain areas of the law. Nonetheless, close to half perceived that not all people have equal rights before the law in Myanmar. Respondents' perceptions appeared to confirm a gap between provisions of the law and reality. Recognising the importance of legal awareness in promoting the rule of law and access to justice, some officials advocated public awareness-raising on aspects of the law.

Chapter 4 examines the nature of the disputes that respondents had been involved in and which types of dispute they considered to be of priority. Land and land-related disputes were both most common and of greatest concern in nearly all communities visited, as people attempted to settle private disputes, obtain land registration, or secure the return of or compensation for confiscated land. Some respondents reported abuse of official authority in land-related matters. Disputes over loans and debts were also relatively common. An underlying cause of cycles of indebtedness is the difficulty of accessing capital. Many of these disputes arose within private collective savings groups and government cooperative loan groups. The formal justice system had little involvement in resolving such disputes.

At the community level, drugs and drug-related issues were a major concern, and have had profound social and economic impacts on families and children. The prevalence of drugs and drug addiction have caused more neighbourhood crime and general insecurity. Some 80% to 90% of cases processed through the district courts were for drug-related offences.

Domestic violence and sexual assault are significant concerns and are sometimes explicitly linked to drug use and addiction. Cultural attitudes towards the private sphere of family life hinder women's ability to leave abusive situations and secure access to justice.

Exploitation of migrant labour and human trafficking are facilitated by the absence of formal documentation, and local communities have little ability to intervene and assist the vulnerable. Ethnic or religious minority groups in northern and southern Shan reported being subject to discrimination and having difficulties obtaining identity documentation.

Respondents also reported difficulties accessing public services such as water supply, a lack of regulation, corruption in the provision of public services and having no effective avenues for redress.

Chapter 5 examines how people went about trying to settle their disputes and resolve their concerns. Respondents in Shan were demonstrably self-reliant, overwhelmingly opting not to use the formal justice system and to attempt to resolve their disputes locally – largely without success. In over half the disputes of greatest concern, complainants first tried to achieve a settlement through direct negotiations. Following direct negotiations and/or the assistance of third parties, 58% of the 62 disputes of greatest concern remained unresolved. Not all settlements resulted in favourable and/or satisfactory final outcomes. This suggests that respondents' access to justice was extremely limited.

Dagyis were the most prominent third parties

involved in attempts at dispute resolution. Certain other people – both males and females who are well respected in their communities – were also sought out to assist with settling disputes and resolving concerns about justice. Farmland Management Committees also play a role. Some complainants did not seek help from anyone or did not take any action following unsuccessful negotiations, usually because they were reluctant to threaten or break social bonds.

Chapter 6 reports on respondents' perceptions and attitudes towards the justice system and those who have a role in the provision of justice services – judges, law officers, the police and community leaders. It revisits the matter of shared values, with a focus on questions of corruption and public accountability by officials. Over 70% of respondents agreed that it is not acceptable for government officials to ask for additional payments. Nonetheless, around 60% thought that judges, law officers and the police would expect additional payments for their services.

Respondents expressed confidence in the competence of judges, law officers and the police, but were less assured that their values aligned with shared values such as fairness, respect and a lack of corruption. In contrast, the majority believed that community leaders are aligned with community priorities and do ascribe to shared values. Overall, the police were the least trusted of the key Judicial actors. Community leaders were the most trusted, by a considerable margin.

Chapter 6 also reports on respondents' perceptions and experience that public officials do not always treat people equally. Respondents consider the poor are most at risk of not being treated equally with others under the law when charged with a criminal offence.

Almost half the respondents would not report two hypothetical incidents involving corruption. A majority of them cited corruption itself as inhibiting attempts to secure accountability. A majority also attributed their reluctance to report to fear, particularly that they would have

to pay, and apprehension about having to deal with the government bureaucracy. The minority of respondents who would or might report corrupt practice most commonly expected action to be taken as a result but did not have high expectations of official accountability. These findings clearly have implications for access to justice.

The overall conclusions and recommendations arising from the study are presented in Chapter 7. The study confirmed shared values as being central to the exercise of access to justice. These shared values also inform people's expectations of judicial processes, whether in formal, quasi-formal/administrative or informal contexts.

The nature of respondents' concerns about justice, and their experiences, indicate that people do not always enjoy the rights and protections they are entitled to under the law. There is a need to ensure that the constitutional principles of equality and justice are upheld in practice, and that people are treated consistently based on the principle of substantive equality.

Administrative justice – broadly construed to include all legitimate means of seeking redress in relation to abuse of public authority and quasi-judicial decision-making by officials of government agencies – is identified as a clear priority to ensure that those who exercise public functions are accountable to the public.

Enhancing public trust in the justice system is a priority for those with a role in the justice sector. Policies that are directed towards promoting shared values (as well as principles such as equality before the law, etc.) in communities, especially in the form of increasing transparency, independence and fairness in the adjudication process, will be important. The clear preference of respondents for dispute settlement within localised, non-formal contexts also suggests that greater transparency will benefit processes other than adjudication, such as the return and redistribution of land previously seized by the State.



CHAPTER 1

INTRODUCTION

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

BACKGROUND TO THE RESEARCH

Following the first phase of a Rule of Law and Access to Justice mapping carried out in Mandalay, Shan and Ayeyarwaddy in 2013, the United Nations Development Programme (UNDP) in Myanmar commissioned further research on access to justice and informal justice systems in three other locations: Rakhine, Kachin and Shan States.

This second phase of research broadens and deepens the focus of the earlier work to include specific attention to informal justice systems. One of the main findings of the 2013 mapping, echoed in a subsequent and separate piece of research carried out in Mon and Yangon in 2014³, highlighted that a large majority of disputes of any kind are settled at the ward and village level, without resort to the formal justice system.

Beyond the two abovementioned initiatives and a very small handful of other qualitative studies, knowledge and understanding relating to access to justice in Myanmar remain patchy. This research therefore aims to contribute towards UNDP's efforts to strengthen the rule of law and increase access to justice in Myanmar, by: (i) expanding UNDP's baseline understanding of how people seek access to justice through the formal justice system, and (ii) deepening UNDP's understanding of how informal justice systems operate. Findings from this study are intended to help UNDP and other stakeholders identify entry points for rule of law and access to justice programming.

RESEARCH PURPOSE AND METHODOLOGY

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?

The research methodology is presented in Annex I. It is important to note that, given the specific selection of study sites and respondents⁴, the findings describe only the study sample⁵. Statistically significant comparisons cannot be made among research respondents and the findings cannot be generalised to any wider population.

CONCEPTUAL OVERVIEW

Two key concepts – legitimacy and trust – are fundamental to good governance in any society. The results of the historic 2015 general

3 Myanmar Legal Aid Network, *Between Fear and Hope: Challenges and Opportunities for Strengthening Rule of Law and Access to Justice in Myanmar* (September 2014).

4 In this report, "respondent" is used to refer to any person who participated in the research study, including those who participated in focus group discussions and interviews.

5 This report includes findings obtained from focus group discussions and key informant interviews conducted as part of pre-testing the research instruments in Sittwe Township. However, findings from the household semi-structured interview questionnaire are not included as the instrument was revised following the pre-test.

elections demonstrated the centrality of these concepts to the exercise of political authority in Myanmar.

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.⁶ 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.⁷

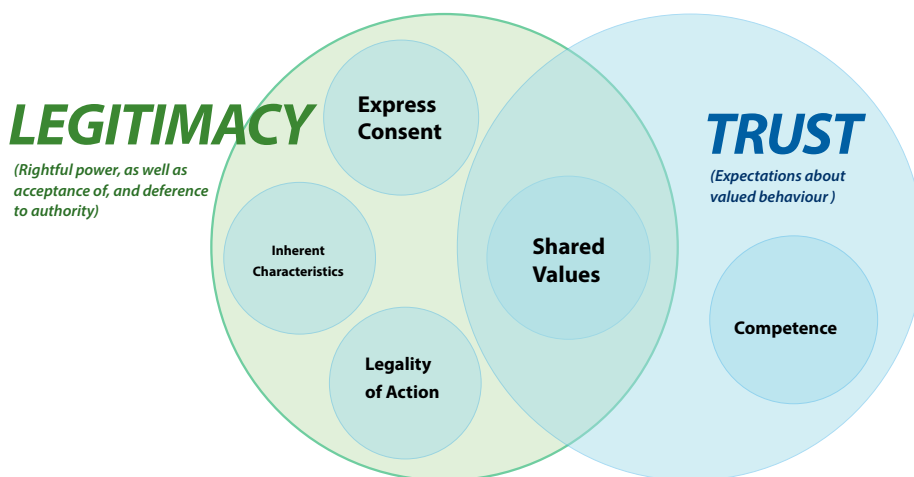
Trust is a function of competence and shared values. In other words, public trust in the justice system depends on those who play a role in the system having the competence (knowledge,

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.⁸ 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 also concerns 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.⁹ 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).¹⁰

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.

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 reveals shared values to be central to the exercise of access to justice.¹¹ 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 law¹², 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.¹³

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.¹⁴

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.¹⁵ 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 is 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.

11 See footnote 1 and Annex I.

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).



CHAPTER 2

CHARACTERISTICS

OF STUDY SITES

AND RESPONDENTS

Photo: Kachin Cultural and Literature Association in Ward No. (5), Kut Kai Township, Shan State

This chapter provides an overall description of the study sites and respondents and their general demographic, socio-economic and cultural characteristics. It also looks at how respondents access local officials and services and the other means of support respondents turn to in times of need.

OVERVIEW OF STUDY SITES

Research was conducted in communities located in the southern (Taunggyi, Loilem and Hsihseng Townships), eastern (Kengtung and Tachileik Townships) and northern (Lashio and Kutkai Townships) parts of Shan State (Map of study sites). Study sites in these locations, especially village tracts, generally covered relatively large geographic areas.

Socio-Economic Observations

On the whole, the populations in study sites had middle to high income levels.

Cultural Observations

In general, Shan State was described as diverse, with many different ethnic minorities having their own languages, cultures and traditions. Some state officials described ethnic people as “calm”, “peaceful”, “frank” and “honest”; others perceived the local people to “lack knowledge”.

One official commented that language was a challenge, for instance when communicating with local administrators. Another official in a different area elaborated that the ethnic minorities “are afraid of [state] institutions ... [and] it is their norm to solve problems in their own way.” Other officials also noted the influence of ethnic leaders, particularly those with connections to armed groups.

Communications

While some officials commented that communications in Shan State were not always easy, state officials in Tachileik described generally good communications infrastructure given the state’s strategic location on the border with Thailand. They reported good cross-border relations, particularly in the form of the Township Border Committee (TBC), described by some officials as a “negotiation and coordination committee”, which aimed at solving disputes and problems between Myanmar and Thailand by de-escalating big issues and turning them into smaller ones. The TBC was chaired by a Tatmadaw battalion commander, and the township administrator, police commander and an Immigration Department official also sat on the committee.

Security Context

People’s militias existed in some townships that were study sites. Officials explained that these militias helped to maintain security in their local area and operated under the direct control of the Tatmadaw.

Some officials explained that state institutions did not reach certain remote parts of the state, which were also where armed groups operated. In northern Shan in particular, officials explained that they worked with the Tatmadaw to carry out their duties and responsibilities.

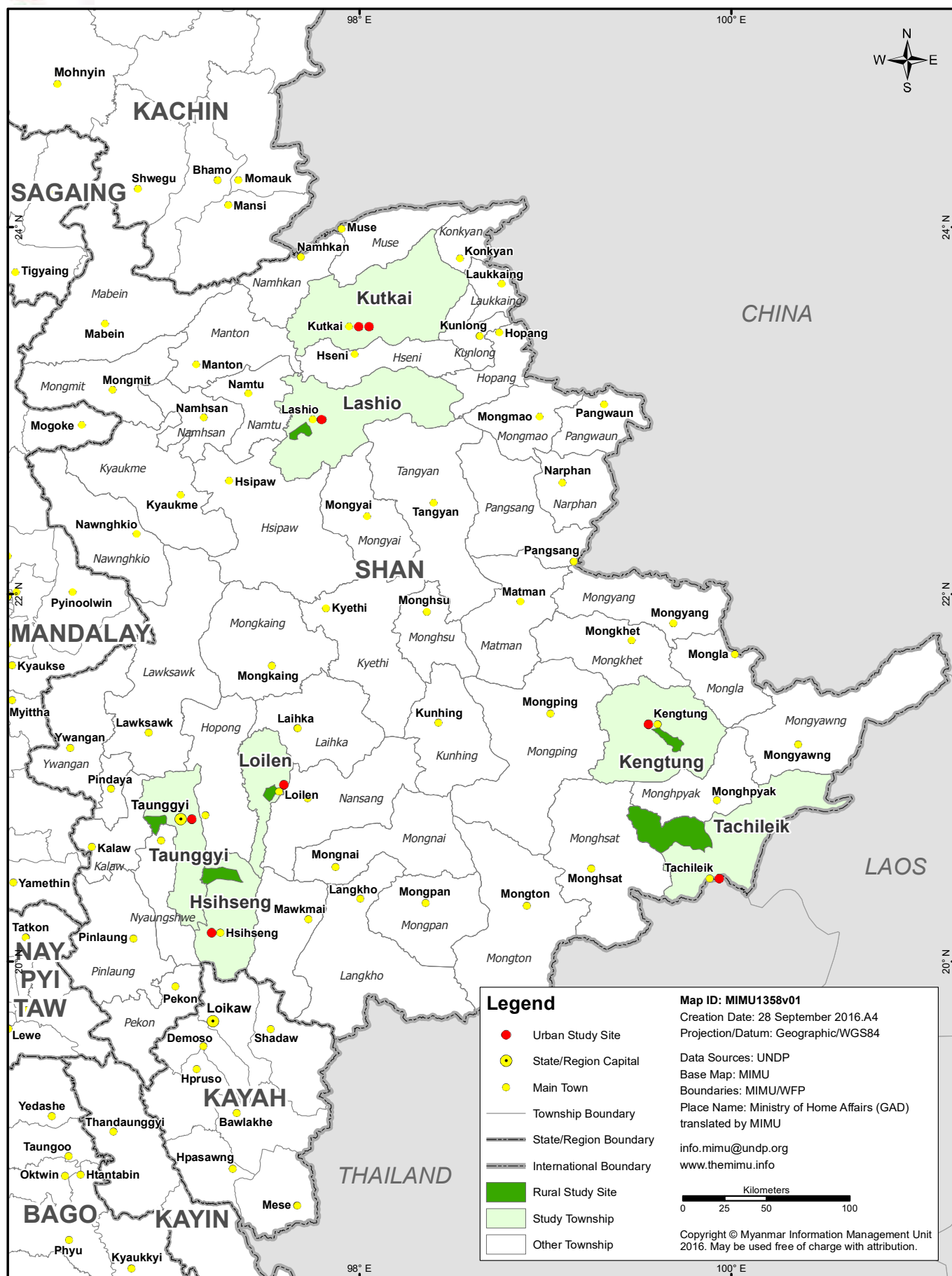
RESEARCH RESPONDENTS

This section describes the demographic and socio-economic background of respondents to the household structured interview questionnaire.

A total of 520 adult respondents (260 females and 260 males) were interviewed across 14 wards and village tracts in seven townships of



UNDP A2J-IJS Study Sites (Shan)



Disclaimer: The names shown and the boundaries used on this map do not imply official endorsement or acceptance by the United Nations.

Shan State. The median age of the respondents was 45 years; the youngest was aged 18 and the oldest 77. Almost three quarters (72.5%) of the respondents were married, at the time of the interview.

Cultural Characteristics

Respondents identified their ethnicity and religion.¹⁶ With regards to ethnicity, respondents' answers were reclassified into 10 categories

¹⁷: Shan¹⁸, Pa-O, Akha, Bamar, Chinese, Kachin, Kokang, Lahu, Ta'ang/Palaung, and those of "South Asian descent"¹⁹. The distribution of respondents by ethnicity and sex is presented in Table 2.1.

In relation to religion, respondents identified themselves variously as Buddhist, Christian, Muslim and Animist. The distribution of respondents by ethnicity and religion is presented in Table 2.2.

Table 2.1 Respondents by Ethnicity and Sex

| Ethnicity | Sex | | TOTAL |
|---------------------|------------|------------|------------|
| | F | M | |
| Shan | 60 | 60 | 120 |
| Pa-O | 40 | 40 | 80 |
| Akha | 20 | 20 | 40 |
| Bamar | 20 | 20 | 40 |
| Chinese | 20 | 20 | 40 |
| Kachin | 20 | 20 | 40 |
| Kokang | 20 | 20 | 40 |
| Lahu | 20 | 20 | 40 |
| Ta'ang/Palaung | 20 | 20 | 40 |
| South Asian descent | 20 | 20 | 40 |
| TOTAL | 260 | 260 | 520 |

Table 2.2 Respondents by Ethnicity and Religion

| Ethnicity | Religion | | | | TOTAL |
|---------------------|------------|------------|----------|----------|------------|
| | Buddhist | Christian | Muslim | Animist | |
| Shan | 119 | -- | 1 | - | 120 |
| Pa-O | 80 | -- | -- | -- | 80 |
| Akha | 2 | 38 | -- | -- | 40 |
| Bamar | 38 | -- | 2 | -- | 40 |
| Chinese | 39 | -- | 1 | -- | 40 |
| Kachin | 1 | 39 | -- | -- | 40 |
| Kokang | 38 | 1 | -- | 1 | 40 |
| Lahu | 10 | 30 | -- | -- | 40 |
| Ta'ang/Palaung | 40 | -- | -- | -- | 40 |
| South Asian descent | 37 | -- | 3 | -- | 40 |
| TOTAL | 404 | 108 | 7 | 1 | 520 |

16 In response to open-ended questions, with no prompting.

17 These were generally reclassified according to a widely recognised and accepted list of 135 discrete ethnic categories. This list includes well-understood ethnic categories, as well as potentially inaccurate ethnographic data, and generally discriminates on the basis of race.

18 Including Shan and Shan Gyi.

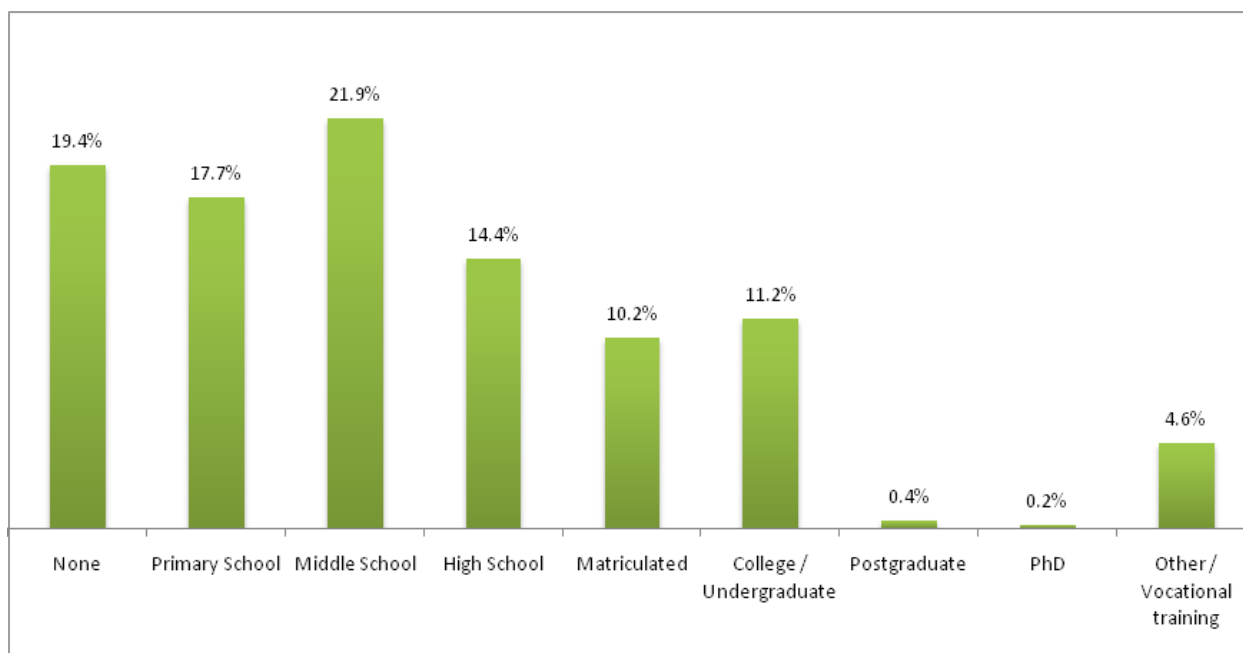
19 The category "South Asian descent" includes respondents who self-identified as Muslim, Indian, Gurkha and Sikh

Education Levels and Myanmar Language Literacy

For purposes of analysis, respondents' answers regarding their completed levels of education were reclassified into nine categories: None, Primary school²⁰, Middle school²¹, High school²², Matriculation²³, College/Undergraduate²⁴, Postgraduate²⁵, PhD²⁶ and Other/Vocational Training²⁷. The distribution of respondents across all education levels is presented in Figure 2.1.

Higher proportions of females than males had received high school or college/undergraduate education, although a lower proportion of females than males had matriculated from high school. On the other hand, a higher proportion of females (22.3%) than males (16.5%) had had no formal or non-formal education (Figure 2.1(a)).

Figure 2.1 Levels of Education



The highest proportion (21.9%) of respondents had attained some level of middle school education. A slightly lower proportion (19.4%) had never had any formal or non-formal education. One in ten (10.2%) had matriculated from high school, and another 11.8% had attained some level of tertiary education at undergraduate, postgraduate or PhD level.

Among respondents who identified as Shan, Akha, Lahu or Ta'ang/Palaung, the highest proportions had never had any formal or non-formal education (Shan, 24.2%; Akha, 32.5%; Lahu, 42.5%; Ta'ang/Palaung, 20%). More than one quarter of all respondents who had never had any formal or non-formal education (28.7%) were Shan (Table 2.3).

20 Defined to include having passed any level between grades 1 and 4.

21 Defined to include having passed any level between grades 5 and 8.

22 Defined to include having passed any level between grades 9 and 10.

23 Defined as having passed grade 11.

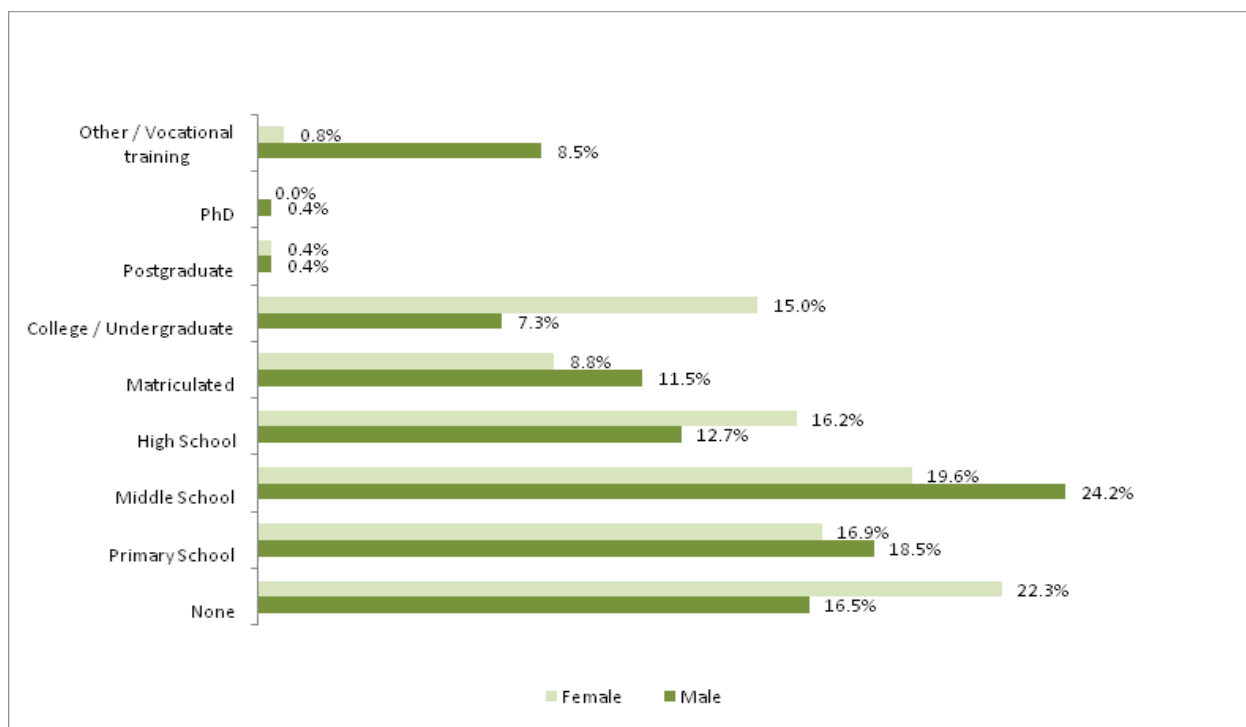
24 Defined to include those currently at, and those graduated from, a tertiary education institution at undergraduate level.

25 Defined to include those currently at, and those graduated from, a tertiary education institution at postgraduate or Master's level.

26 Defined to include those currently enrolled in, or having completed, a PhD programme.

27 Defined to include Chinese and religious education.

Figure 2.1(a) Levels of Education by Sex



Respondents indicated whether they were able to read a newspaper and write a letter in the Myanmar language. More than two-thirds (69.6%) reported that they were able to do both.

Almost one quarter (24.6%) of respondents indicated that they were unable to either read or write in the Myanmar language.

Table 2.3 Levels of Education by Ethnicity

| Education Level | Ethnicity | | | | | | | | | | TOTAL |
|---------------------------|------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|----------------|---------------------|------------|
| | Shan | Pa-O | Akha | Bamar | Chinese | Kachin | Kokang | Lahu | Ta'ang/Palaung | South Asian descent | |
| None | 29 | 17 | 13 | 1 | 2 | 1 | 10 | 17 | 8 | 3 | 101 |
| Primary School | 19 | 32 | 6 | 4 | 4 | 3 | 8 | 6 | 6 | 4 | 92 |
| Middle School | 22 | 18 | 9 | 14 | 15 | 9 | 3 | 4 | 7 | 13 | 114 |
| High School | 20 | 3 | 5 | 7 | 6 | 9 | 5 | 4 | 6 | 10 | 75 |
| Matriculated | 11 | 5 | 5 | 7 | 2 | 5 | 1 | 7 | 5 | 5 | 53 |
| College/Undergraduate | 15 | 5 | 2 | 7 | 5 | 11 | 3 | 2 | 4 | 4 | 58 |
| Postgraduate | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| PhD | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Other/Vocational training | 3 | 0 | 0 | 0 | 6 | 0 | 10 | 0 | 4 | 1 | 24 |
| TOTAL | 120 | 80 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 520 |

Literacy was generally higher among male respondents. A lower proportion of female (65.4%) than male (73.8%) respondents reported being literate (by these measures) in the Myanmar language and a higher proportion of female (28.5%) than male (20.8%) respondents reported being illiterate in the Myanmar language (Figure 2.1(b), Annex II).

Persons with Disability

A small minority of respondents (6.7%) reported having a person with at least one type of disability within their household. These included physical, visual, hearing, speech and/or mental disabilities or impairments.

Table 2.4 Myanmar Language Literacy by Ethnicity

| Myanmar Language Literacy | Ethnicity | | | | | | | | | | TOTAL |
|---------------------------|-----------|------|------|-------|---------|--------|--------|------|----------------|---------------------|-------|
| | Shan | Pa-O | Akha | Bamar | Chinese | Kachin | Kokang | Lahu | Ta'ang/Palaung | South Asian descent | |
| Able to read and write | 83 | 49 | 22 | 39 | 33 | 37 | 15 | 19 | 30 | 35 | 362 |
| Able to read, not write | 11 | 9 | 3 | 0 | 0 | 0 | 2 | 2 | 1 | 2 | 30 |
| Not able to read or write | 26 | 22 | 15 | 1 | 7 | 3 | 23 | 19 | 9 | 3 | 128 |
| TOTAL | 120 | 80 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 520 |

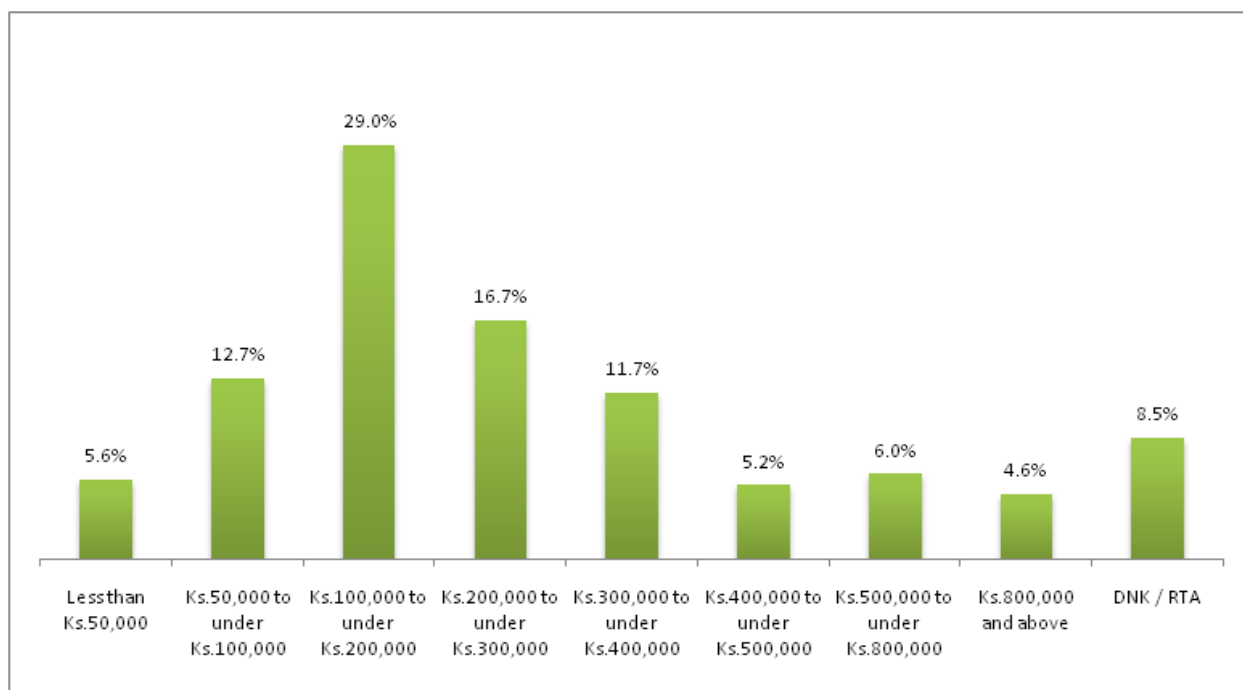
A majority of Kokang respondents (57.5%) reported being illiterate in the Myanmar language. Equal proportions of Lahu respondents (47.5%) reported being literate and illiterate in the Myanmar language. Significant proportions of those who identified as Shan, Pa-O or Akha reported being illiterate in the Myanmar language (Shan, 21.7%; Pa-O, 27.5%; Akha 37.5%).

Income and Household Assets

The approximate levels of respondents' monthly household income are presented in Figure 2.2.

More than one quarter (29.0%) of respondents reported a household income of between Ks.100,000 and Ks.200,000 per month. A small minority (5.6%) of households had income of less than Ks.50,000 per month. About one in ten (10.6%) respondents reported having a total household income of over Ks.500,000 per month. Household incomes disaggregated by ethnicity are presented in Table 2.5, Annex II.

Figure 2.2 Monthly Household Income Levels



The primary sources of household income were agriculture (40.6% of respondents), small businesses involving trading, buying and selling (16.5%) and small businesses involving the provision of services (such as transport repairs, post-harvest processing, etc.) (10.2%). More than two in five (42.1%) respondents reported not having secondary sources of household income.

Large majorities of respondents reported having a mobile phone (94.9%), motorcycle/tuk tuk (88.6%) and/or television set (87.2%). About two in five (39.1%) respondents owned a radio, over a quarter (29.3%) owned a refrigerator and one fifth (21.0%) owned a power generator. Eleven respondents indicated that their household did not own any of the 15 assets listed in the questionnaire. Ownership of television sets, radios and mobile phones, disaggregated by monthly household income level, is presented in Figure 2.2(a), Annex II.

Mass Media Exposure and Access to Information

Respondents indicated their levels of exposure to mass media by stating how often per week they watched television, listened to the radio and read newspapers or journals (Figure 2.3). A very large majority never read newspapers or journals and almost as many never listened to the radio.

On a weekly basis, about half (49.8%) the respondents watched television every day or almost every day. Only a minority listened to the radio (16.0%) or read newspapers or journals (6.5%) every day or almost every day.

Over one quarter (26.0%) of respondents never watched television, and more than two-thirds never listened to the radio (67.9%) or read newspapers or journals (70.4%) in the course of a week.

Figure 2.3 Mass Media Exposure

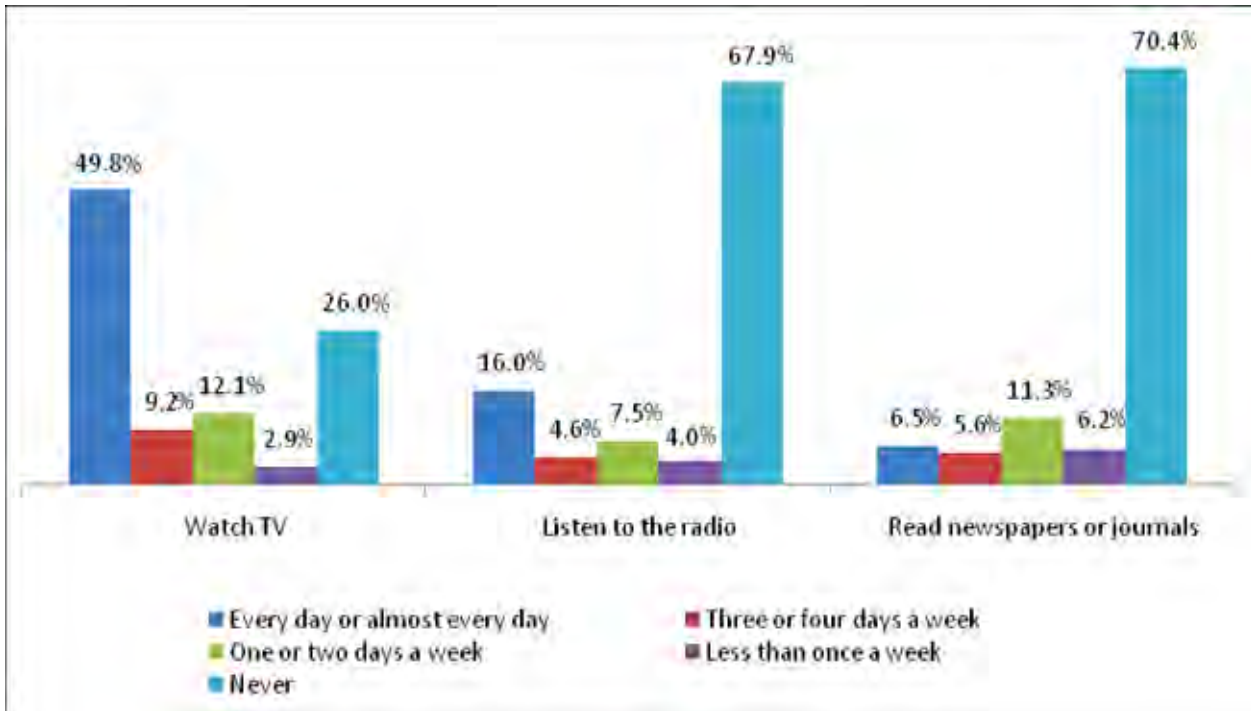
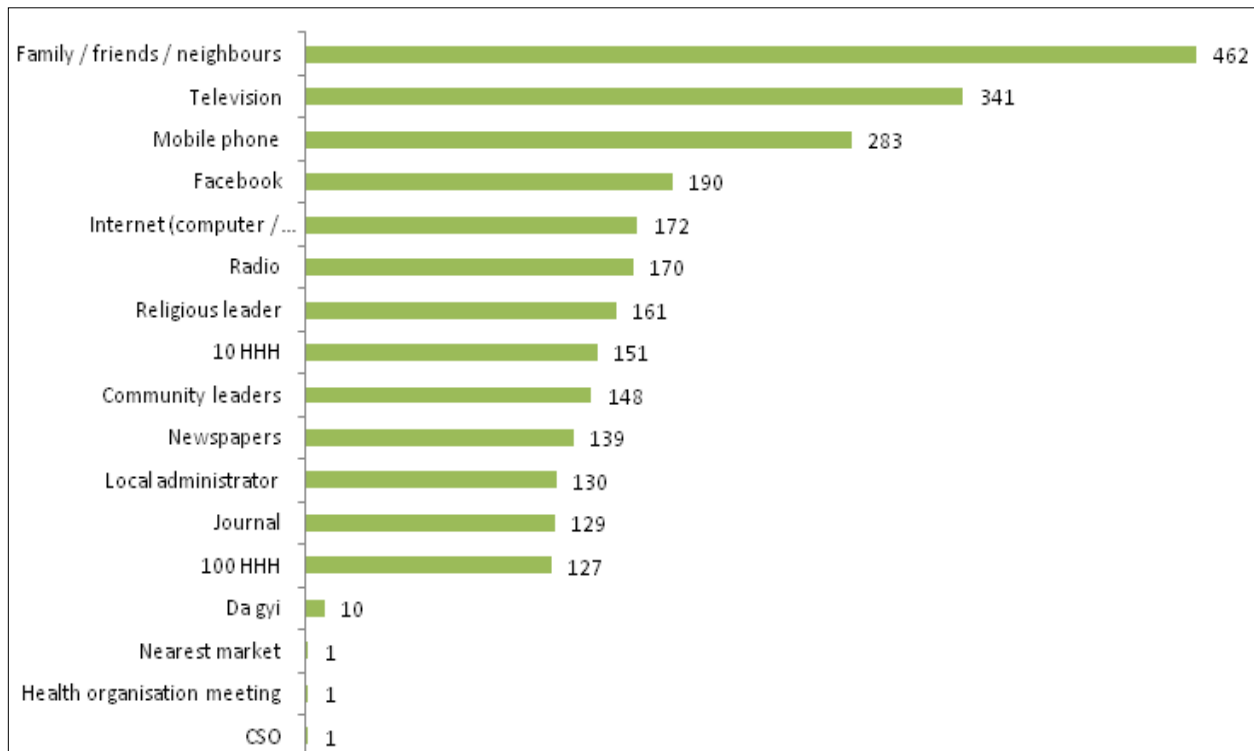


Figure 2.3(a) Access to Information



By far the most common source of information was family/friends/neighbours (92.2% of respondents). Majorities of respondents also relied on television (68.1%) and mobile phones (56.5%). More than one third used Facebook (37.9%), the Internet (34.3%) or radio (33.9%) as sources of information.

Female and male respondents appear to access information in slightly different ways (Figure 2.3(b), Annex II). For female respondents, the most common way of learning about what is happening in the country was through family/friends/neighbours (94.8%). The next most common sources were television (63.6%), mobile phones (55.6%), Facebook (36.8%) and the Internet (33.6%).

Male respondents appear to have more diversified sources of information, particularly in relation to print media and the radio. As with female respondents, the most common way for males to obtain information about developments in Myanmar was through family/friends/neighbours, though a slightly lower proportion (89.6%) of males did so. The next most common sources were television (72.5%), mobile phones (57.4%), radio (42.2%), Facebook (39.0%), newspapers (37.8%), the Internet (35.1%), journals (33.9%) and religious leaders (33.5%).

Respondents also indicated the main languages in which they received information.²⁸ A majority (61.3%) reported that this was in Myanmar. Others received information in Pa-O (5.8%), Shan (5.4%), Chinese (4.6%) and Thai (4.6%). This pattern diverges from the distribution of primary languages spoken in respondents' households: over one-fifth (22.3%) of respondents reported speaking Shan, followed by Myanmar (17.3%), Pa-O (13.8%), Jinghpaw (7.7%)²⁹, Lahu (7.7%), Ta'ang/Palaung (7.5%), Kokang (7.3%), Akha (7.1%), Chinese (4.8%) and Gurkha (3.5%) (Figure 2.3(c), Annex II).

Nine male and 10 female respondents stated that they did not receive any information about what is happening in the country. Eight of these respondents were Pa-O, five were Shan and the remainder were Lahu, Ta'ang/Palaung, Bamar or Kokang.

Access to Services

Respondents had relatively easy access to their nearest ward and village tract administrators (W/VTAs). Almost three quarters (74.8%) of respondents reported that it took them 15 minutes or less to reach their W/VTAs. A minority (14.0%) estimated that it took them up to half an hour. A small minority (6.5%) stated that they did not know where their local administrators were located. In terms of cost, just over half (51.5%) the respondents stated that visiting their local administrator would be cost free, and more than one quarter (29.8%) indicated that such a visit would cost them Ks.500 or less. Close to three quarters (72.1%) of respondents stated that, over the course of a year, they had never visited their W/VTA office to seek help, and about one quarter (24.8%) estimated they had visited it between one and five times.

Half (50.2%) the respondents said that it would take them 15 minutes or less to reach the police post closest to their household, and almost one third (30.8%) stated that it would take them up to half an hour. About one in 10 (11.5%) stated that they did not know where the police post nearest to their home was. In terms of cost, similar proportions of respondents reported that visiting the police post would be cost free (31.2%) and would cost less than Ks.500 (32.1%). A large majority (88.8%) of respondents stated that, over the course of a year, they had never visited the local police post to seek help, and the remainder (11.2%) indicated they had visited it between one and five times.

28 Researched via open-ended questions, with no prompting.

29 This figure (7.7%) includes 6.3% of respondents who reported "Kachin" as the main language spoken within their household. In general, the term "Kachin" is understood as an umbrella term encompassing the six main clans of Jinghpaw, Lacid/Lashi, Lhaovo/Maru, Lisu, Rawang and Zaiva/Atsi.

To access the religious leaders closest to their home, more than three quarters (78.1%) of respondents reported that it would take 15 minutes or less, and another 16.0% estimated that it would take them up to half an hour. In terms of cost, over two-thirds (69.6%) of respondents indicated that visiting their religious leader was cost free, and almost one in five (18.7%) stated that it would cost Ks.500 or less. A large majority (86.9%) of respondents stated that, over the course of a year, they never visited their nearest religious leader to seek help, and 11.2% estimated that they had done so between one and five times.

With respect to services at the township, around 25% to 30% of respondents reported that it would require 15 minutes or less to reach the General Administration Department (GAD) in the township (24.8%), the township police (31.7%) and the township court (26.9%). Similar proportions of respondents estimated that it would require up to half an hour (township GAD: 29.0%; township police: 31.9%; township court: 32.1%). A significant minority stated that they did not know the location of the township GAD (26.9%), township police (16.9%) and township court (19.2%). Respondents' estimates of the costs associated with accessing these services are presented in Figure 2.6, Annex II. It is worth noting that very large majorities of respondents reported never having visited the township GAD (94.4%), township police (92.7%) and township court (97.7%) to seek help over the course of a year.

Main Sources of Support

When they need help, one third (33.8%) of respondents turn to their families. Small minorities seek help from friends and colleagues (15.0%) and neighbours (6.7%). Significantly, more than two in five (43.5%) respondents reported that they had no one from whom they could receive assistance. Among those who identified that

they had sources of help, a very large majority (92.2%) indicated that those sources were not affiliated to a political party and a majority (54.1%) reported that their sources of support were people of relatively higher wealth.

In summary, study sites across Shan State were relatively diverse and generally had medium to high income levels. People's militias existed in some sites.

More than one quarter of the respondents who had never had any education were Shan. Almost one quarter of all respondents were illiterate in the Myanmar language, including the majority of Kokang respondents and significant proportions of those who identified as Shan, Pa-O or Akha. A very large majority of respondents never read newspapers or journals and almost as many never listened to the radio.

The primary source of respondents' household income was agriculture.

Respondents' most common source of information was family/friends/neighbours. Male respondents appear to have more diversified sources of information than do females, particularly in relation to print media and the radio.

More than 40% of respondents reported that they had no one from whom they could get help when needed.



Photo: Bird-eye view of Taunggyi, capital of Shan State



CHAPTER 3

PERCEPTIONS OF JUSTICE AND LAW

Photo: One-Stop-Service (OSS) office in the compound of Tachileik Township Administration Office, eastern Shan State

This chapter first reports on levels of social trust among respondents. Social trust was explored in terms of: (i) respondents' perspectives on how trustworthy and how fair people generally are, and (ii) the degree to which respondents trust people other than themselves.

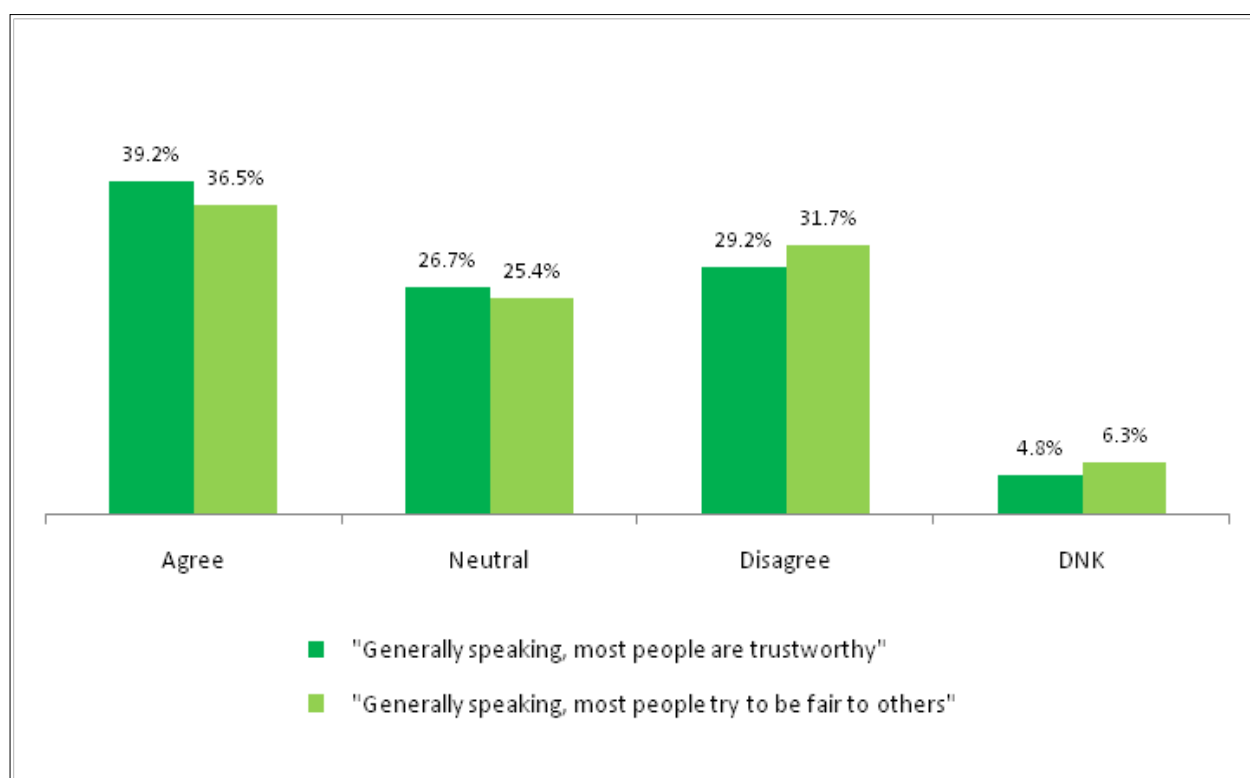
It then examines respondents' perceptions of certain dimensions of justice and law. This provides some context to the study's enquiry into

why and how people seek access to justice (as outlined in the following chapters).

SOCIAL TRUST

Respondents indicated their perceptions of two characteristics associated with social value: trustworthiness and fairness (Figure 3.1).³⁰

Figure 3.1 Social Trust: Trustworthiness and Fairness



Over one third of respondents agreed that, "Generally speaking, most people are trustworthy" (39.2%) and that, "Generally speaking, most people try to be fair to others" (36.5%). However, sizeable minorities disagreed: 29.2% disagreed with the proposition that most people are trustworthy, and 31.7% disagreed with

the proposition that people generally try to be fair to others.

Female respondents were less likely than male respondents to agree, and more likely than male respondents to disagree, with the two statements (Figure 3.1(a), Annex II).

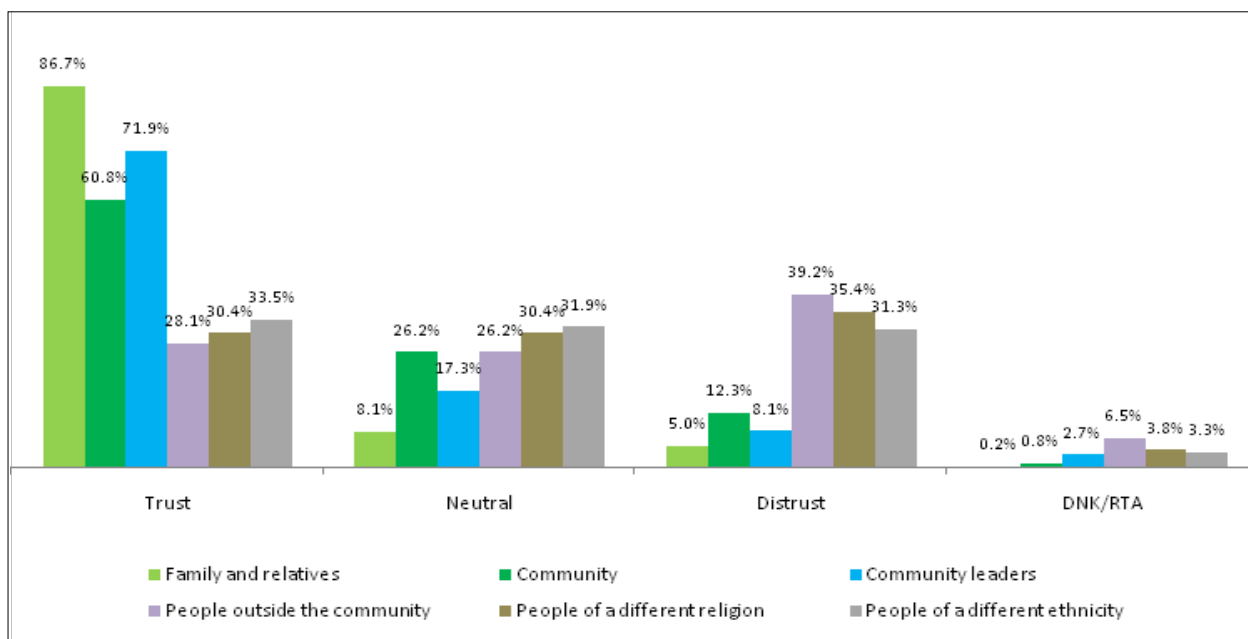
30 Respondents were asked the extent to which they agreed or disagreed with two statements on trustworthiness and fairness. Their responses were recorded on a seven-point Likert scale: "Agree strongly"; "Agree somewhat"; "Agree a little"; "Neither agree nor disagree"; "Disagree a little"; "Disagree somewhat"; "Disagree strongly". To simplify analysis, the responses "Agree strongly", "Agree somewhat" and "Agree a little" are combined as "Agree", and the responses "Disagree a little", "Disagree somewhat" and "Disagree strongly" are combined as "Disagree".

Respondents also indicated the extent to which they trust or distrust various categories of people: family and relatives; neighbours, friends and people within the community; community leaders; people outside the community; people of a different religion; and people of a different ethnicity (Figure 3.2).³¹

PERCEPTIONS OF JUSTICE

While the study did not explore respondents' understanding of justice as a concept, it sought their perspectives on eight important dimensions of justice (as expressed in a series of given statements):

Figure 3.2 Social Trust: Trust in Others



The results demonstrated strong family and community allegiances. Unsurprisingly, family and relatives were the most trusted and large majorities of respondents also trusted community leaders and community members. People outside the community were the least trusted.

Female respondents consistently expressed lower levels of trust and higher levels of distrust than did males (Figure 3.2(a), Annex II).

In summary, respondents were somewhat more likely to consider most people generally to be trustworthy and fair than they were to disagree, and females disagreed more than males. Overall, respondents demonstrated strong allegiance to family and community and tended to distrust "outsiders".

- 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 (Table 3.1).

³¹ Respondents were asked the extent to which they trusted each of the given categories of people. Their responses were recorded on a seven-point Likert scale: "Trust very much"; "Trust somewhat"; "Trust a little"; "Neither trust nor distrust"; "Distrust a little"; "Distrust somewhat"; "Distrust very much". To simplify analysis, the responses "Trust very much", "Trust somewhat" and "Trust a little" are combined as "Trust", and the responses "Distrust a little", "Distrust somewhat" and "Distrust very much" are combined as "Distrust".

Table 3.1 Perceptions of Justice

| Dimensions of Justice | Statements | Agree* |
|--------------------------|--|--------|
| FORMAL vs. INFORMAL | (a) Some disputes are best settled in the courts. | 10.8% |
| | (b) It is better for most disputes to be settled within the community. | 73.1% |
| EQUALITY | (a) Every person deserves equal care and concern by the government regardless of religion or ethnicity. | 81.3% |
| | (b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups. | 12.5% |
| FATE vs. REMEDY | (a) Injustices can befall people, and there is nothing they can do about it because it is their fate. | 14.0% |
| | (b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome. | 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. | 48.3% |
| | (b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others. | 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. | 51.2% |
| | (b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar. | 37.5% |
| PROCESS vs. OUTCOME | (a) Being fairly treated throughout a process is more important than obtaining a favourable outcome. | 89.8% |
| | (b) Obtaining a favourable outcome is more important than being treated fairly during a process. | 5.0% |
| GENDER | (a) Men and women have equal value, but women have greater responsibility to care about culture and tradition. | 6.2% |
| | (b) Men and women have equal value, and both have equal responsibility to care about culture and tradition. | 92.1% |
| INDIVIDUAL vs. COMMUNITY | (a) Individual rights must be as respected as communal harmony. | 55.6% |
| | (b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised. | 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.

Significant majorities of respondents agreed that men and women have equal value and equal responsibility for caring about culture and tradition (92.1%), that procedural fairness is more important than obtaining a favourable outcome (89.8%), that people are able to seek help, obtain a remedy and ensure a fair outcome following an injustice (81.5%) and that everyone deserves equal care and concern by the government regardless of religion or ethnicity (81.3%).

Almost three quarters (73.1%) of respondents indicated a preference for disputes to be settled within the community. Notably, 14.4% of respondents agreed with both statements, that “Some disputes are best settled in the courts” and that “It is better for most disputes to be settled within the community”.

Just over half the respondents agreed that individual rights must be as respected as communal harmony (55.6%), and that problems in the past should not be revisited and everyone should focus on building a new Myanmar (51.2%).

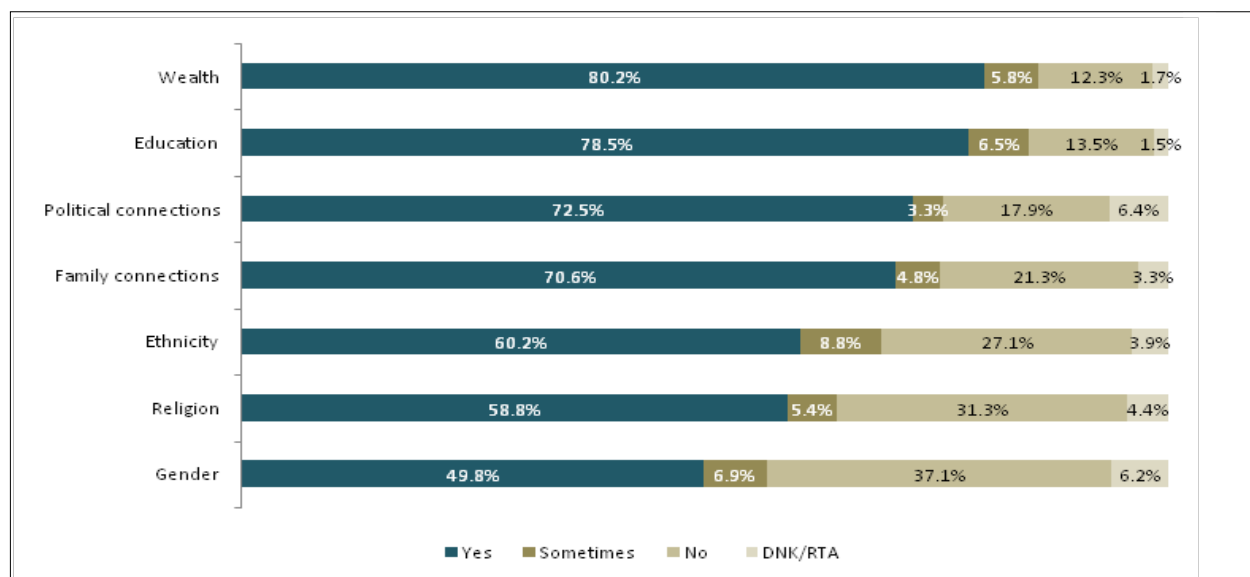
Just under half (48.3%) the respondents thought that matters within a family are private, and that a married man has complete authority over his family; however, almost two in five respondents (39.4%) agreed that a community sometimes has the responsibility to intervene in others’ household matters. One in ten (10.6%) respondents agreed with both statements.

Female and male respondents held generally consistent views, as did respondents in urban and rural locations (Tables 3.1(a) and 3.1(b), Annex II).

While the perceptions of Buddhist and Christian respondents were generally consistent, they diverged in relation to two dimensions of justice. With respect to transitional justice, the majority of Buddhist respondents (53.0%) thought that the past should not be revisited and that focus should be on building a new Myanmar, whereas the largest proportion of Christian respondents (46.3%) thought that problems in the past must be addressed. Regarding the private/public dimension of justice, a majority of Buddhist respondents (52.0%) thought that matters within the family are private, and that a married man has complete authority over his family, whereas a similar majority of Christian respondents (51.9%) thought that a community sometimes has the responsibility in certain circumstances to intervene in others’ household matters. The perceptions of Buddhist and Christian respondents in relation to the various dimensions of justice are presented in Table 3.1(c), Annex II.

Respondents also indicated what they thought about factors that might be considered to determine how well a person is treated in Myanmar society: education, wealth, ethnicity, gender, religion, family connections and political connections (Figure 3.3).

Figure 3.3 Treatment Factors



Respondents overwhelmingly (80.2% of respondents) cited wealth as a factor that determines how well a person is treated in Myanmar society. Large majorities also believed that education (78.5%), political connections (72.5%), family connections (70.6%), ethnicity (60.2%) and religion (58.8%) determine how well people are treated. Almost half (49.8%) believed that gender determines how well a person is treated in Myanmar society.

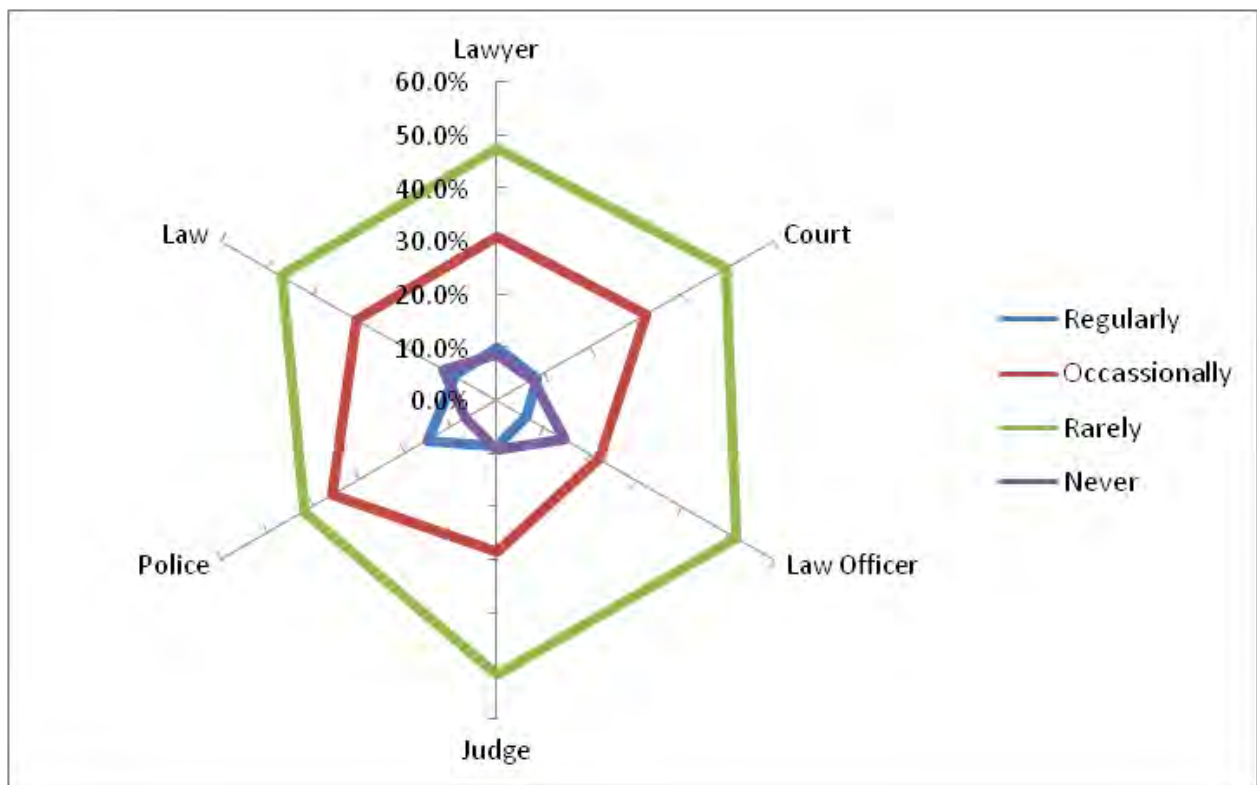
In summary, overall, respondents clearly preferred disputes to be settled locally. Significant majorities agreed that men and women have equal value and equal responsibility for caring about culture and tradition, that procedural fairness is more important than obtaining a favourable outcome, that people are able to seek help, obtain a remedy and ensure a fair outcome following an injustice and that everyone deserves equal care and concern by the government regardless of religion or ethnicity.

People overwhelmingly cited wealth, and large majorities cited education and political connections, as the main factors that determine how well a person is treated in society.

PERCEPTIONS OF LAW

While the study did not seek to test respondents' legal knowledge, it sought to understand their perceptions of how the justice system functions, or how it would work in given circumstances. Respondents indicated how often they heard or used certain words – “law”, “police”, “judge”, “law officer”, “court” and “lawyer” – in day-to-day conversation. The results (Figure 3.4) give some indication of respondents' relative engagement with the formal justice system (on this basis). They also illustrate “gaps”, to the extent that they exist, between provisions of the law in Myanmar and perceived reality.

Figure 3.4 Words in Daily Conversation



Just over half the respondents (51.0%) reported regular or occasional use of the word “police” in day-to-day conversation. Majorities of respondents reported that they rarely, or had never, heard or used the words “law officer” (66.3%), “judge” (60.9%), “law” (58.6%), “court” (57.5%) and “lawyer” (56.1%).

Overall, female respondents reported lower levels of exposure to these words than did male respondents (Figure 3.4(a), Annex II).

spond to each of these propositions. However, it is important to note that it is not possible on the basis of the results to disentangle respondents’ (presumed) lack of legal knowledge from a lack of implementation of the law.

On the issue of child labour, most respondents (41.3%) believed that children aged 12 or older can “choose and decide” to work in teashops. This perception reflects a common phenomenon that has its causes in poverty across the

Table 3.2 Perceptions of Law

| Dimensions of Justice | Statements | Agree* |
|-------------------------|--|--------|
| CHILD LABOUR | (a) In Myanmar, it is illegal for children under 12 years of age to be working in teashops. | 25.4% |
| | (b) In Myanmar, children who are 12 and above can choose and decide to work in teashops. | 41.3% |
| EQUALITY BEFORE THE LAW | (a) In Myanmar, every person has equal rights before the law. | 38.3% |
| | (b) In Myanmar, not all people have equal rights before the law. | 49.8% |
| VIOLENCE AGAINST WOMEN | (a) According to national law, only when a woman has experienced physical violence can she report it to the police. | 48.7% |
| | (b) According to national law, women who receive threats to their safety can also report to the police. | 38.3% |
| LAND RIGHTS | (a) When pursuing a land claim, the strongest claim is an official paper land certificate. | 66.9% |
| | (b) When pursuing a land claim, an official paper land certificate is not regarded as a stronger claim than a community-recognised ancestral land claim. | 23.7% |

* The totals of 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.

Respondents then indicated their understanding of four propositions regarding particular legal provisions (as expressed in a series of given statements) (Table 3.2). This cast some light on their perceptions of the law and how it operates in Myanmar. Notable minorities (between 5.4% and 11.4%) did not know how (or refused) to re-

spond to each of these propositions. However, it is important to note that it is not possible on the basis of the results to disentangle respondents’ (presumed) lack of legal knowledge from a lack of implementation of the law. On the issue of child labour, most respondents (41.3%) believed that children aged 12 or older can “choose and decide” to work in teashops. This perception reflects a common phenomenon that has its causes in poverty across the

in teashops. Interestingly, nearly one quarter of respondents agreed with both statements (12.7%) or neither statement (11.5%).

Almost half (49.8%) the respondents perceived that not all people have equal rights before the law in Myanmar. In this regard, the 2008 Constitution contains potentially contradictory provisions: on the one hand, the rights of equality, liberty and justice are guaranteed only to citizens (Art. 21(a)), and on the other, equal rights before the law and equal legal protection are guaranteed to any person in the Union (Art. 347).

In relation to violence against women, just under half (48.7%) the respondents thought that women who receive threats to their safety can report to the police³², while more than one third (38.3%) believed that a woman could only do so when she has experienced physical violence.

Two-thirds (66.9%) of respondents thought that an official paper land certificate is the strongest piece of ownership documentation to have when pursuing a land claim; less than one quarter (23.7%) believed that a community-recognised ancestral land claim provides an equally strong claim.

Legal Awareness

While some state officials stated that legal awareness among the populace was important for promoting the rule of law and access to justice, they did not always elaborate further, for example, on which particular aspects of legal awareness might be especially useful. Where they did elaborate on the significance of awareness-raising, some highlighted the topics of drugs and land laws. Others identified specific purposes for raising awareness: one township judge commented that it was to “explain what rights [people] have in law”, while a district judge stated that, “People should know how to seek remedies, [and] how to contact government departments.”

Underlying some of the broad comments on the importance of awareness-raising was an implicit connection with education levels in general. A police officer stated that awareness-raising should target those who are uneducated. One township judge remarked that it was imperative to “educate all, [and] not just the people. ... Institutions have to be educated to not be corrupt. Some know the law, but abuse the law. Service providers have to be encouraged to abide by the law.”

In summary, if respondents’ everyday conversation is an indication of their relative engagement with the formal justice system, it is clear that, generally, they are not engaged. They are more familiar with the police than with law officers, lawyers, courts and judges.

Significant numbers of respondents did not know or misunderstood certain areas of the law. Nonetheless, close to half the respondents perceived that not all people have equal rights before the law in Myanmar. Respondents’ perceptions appeared to confirm a gap between provisions of the law and reality.

Some state officials asserted the importance of legal awareness among the populace for promoting the rule of law and access to justice, and advocated awareness-raising, for example on the laws regarding drugs and land. Some seemed to imply a connection between the need for awareness-raising and people’s generally low levels of education.

32 Penal Code, 1861, s. 503.



CHAPTER 4

DISPUTES AND CONCERNS ABOUT JUSTICE

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

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

The previous chapter indicated that respondents are not engaged with the formal justice system, although they are familiar with the role and activities of the police in an everyday context. How, then, do they go about seeking resolution to their disputes and concerns about justice?

This chapter identifies the main disputes and concerns about justice that arose at both the individual/household and community levels, describes respondents' involvement in them and identifies their priority concerns about justice. It then examines a number of thematic issues that were apparent in Shan during the course of the study.

INDIVIDUAL/HOUSEHOLD LEVEL

In order to understand the nature of people's concerns about justice, the study first investigated the range and incidence of disputes that had taken place (or were ongoing) in the local area over the preceding 12 months.

Types of Disputes

Just 84 of the 520 respondents stated that their household had experienced at least one dispute in the course of the previous 12 months. These disputes related to a wide range of matters, and included 19 types of dispute on a given list³³, plus others (e.g., traffic accident, theft and suspected homicide).

The most common type of dispute related to land (reported by 34 respondents). In addition, five respondents reported problems obtaining a land registration certificate. Also common were disputes over debts owed by others (14), bribery or corruption (11) and problems obtaining birth and identity documentation (10). Problems obtaining other official documents, inheritance disputes and water-related disputes were each reported by six respondents (Figure 4.1).

Incidence of Disputes

These 84 respondents reported having been involved in 148 disputes (Figure 4.2).

33 Natural resources: land, water, forestry (including forest products), fishing rights; Administrative issues: problems obtaining birth and identity documentation, land registration certificate, other official documents; Family disputes: separation or divorce, child guardianship, inheritance, domestic violence; Labour disputes: working hours or wages; Financial problems: repayment of loans, debt owed by others; Crimes: robbery, trespass, sexual assault, other physical assault, fight, human trafficking, drug-related problems; Disputes with authorities: bribery or corruption, arrest by authorities.

Figure 4.1 Types of Disputes

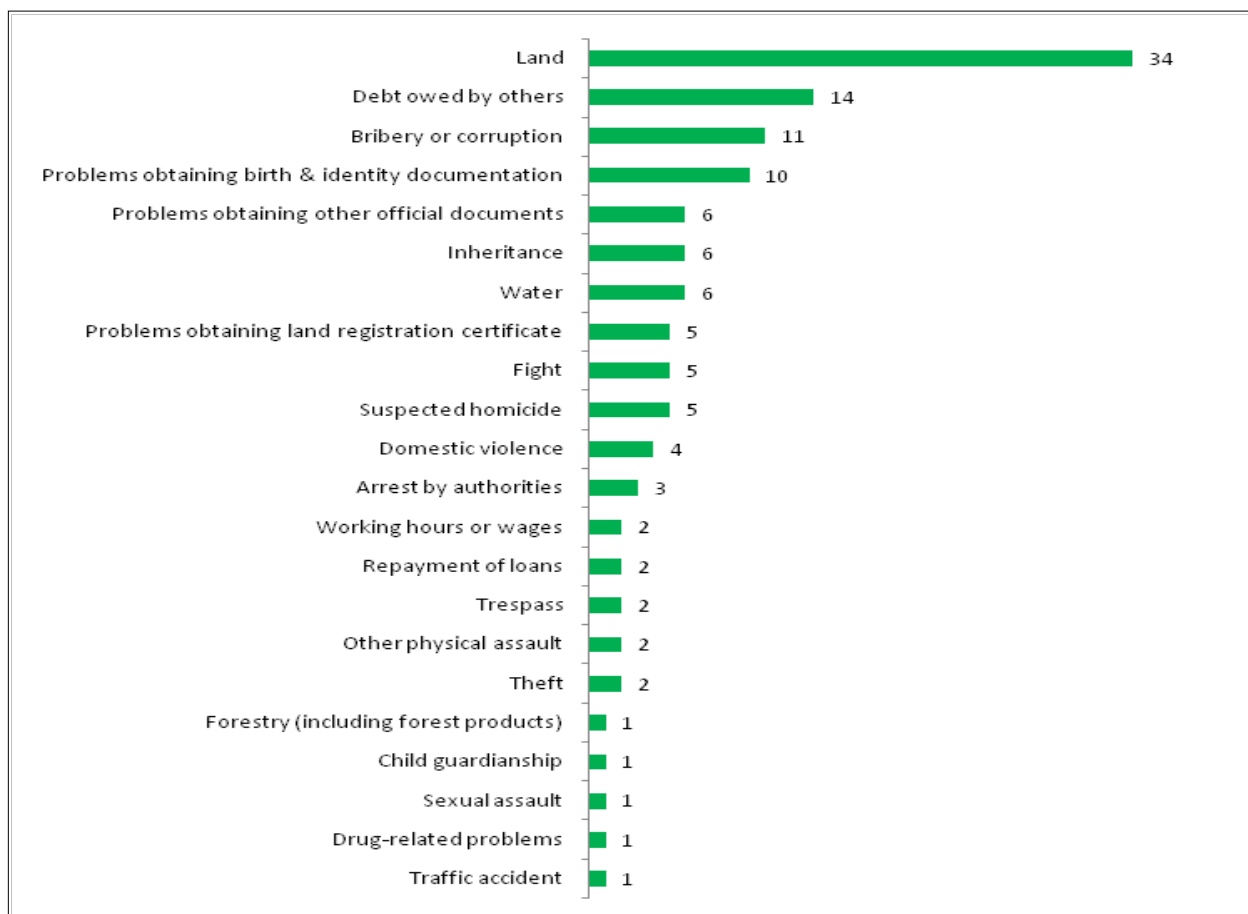
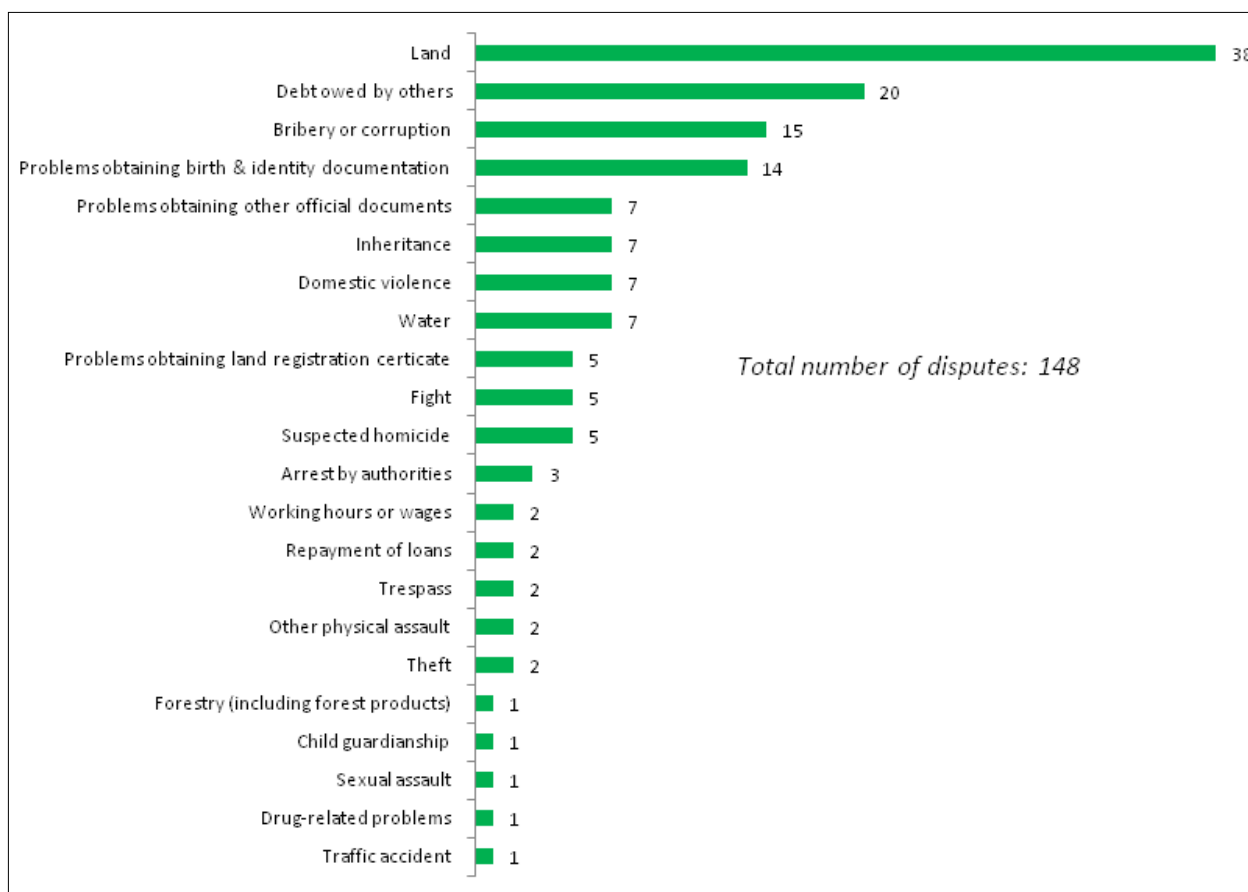


Figure 4.2 Incidence of Disputes



Disputes over land occurred significantly more often than any other type of dispute, accounting for one quarter (25.7%; 38 of 148) of all disputes reported. Other disputes occurred less frequently: debts owed by others (13.5%; 20 of 148), bribery or corruption (10.1%; 15 of 148), problems obtaining birth and identity documentation (9.5%; 14 of 148), and problems obtaining other official documents, domestic violence, inheritance and water-related disputes (each accounting for 4.7%; 7 of 148). These eight most frequent types of dispute together accounted for 115 of the 148 disputes.

Respondents experienced financial loss in 65 of these 115 disputes, across all categories of dispute. There were 22 instances of property damage and six cases of physical injury.

The majority of land-related disputes (29 of 38 disputes) appear to be in the nature of private disputes, primarily involving other individuals from within the respondents' own communities or other communities, family members or groups outside the community. In the remaining cases, the township GAD, the township Land Records Department, the Tatmadaw and the municipality were identified as the opposite parties to the dispute.

In 19 of the 20 disputes over debts owed by others, the respondents identified other individuals from within their own communities or other communities as the opposite party.

In 13 of the 15 disputes regarding bribery or corruption, respondents identified those who exercise some form of state function as the opposite party to the dispute: the township Immigration Department, township Land Records Department, traffic police, district GAD, local administration and Road Transport Administration Office. In a few instances, private individuals were identified as opposite parties.

In 13 of the 14 disputes relating to problems obtaining birth and identity documentation, respondents identified the township Immigration Department as the party with whom the dispute occurred; the other cited the district GAD.

Disputes relating to domestic violence, inheritance and water appear to be in the nature of private disputes involving family members and individuals or groups from either respondents' own communities or other communities. In relation to problems obtaining other official documents, respondents identified the township Immigration Department, local administration office clerks, the Road Transport Administration Office, the people's militia and a private individual as opposite parties.

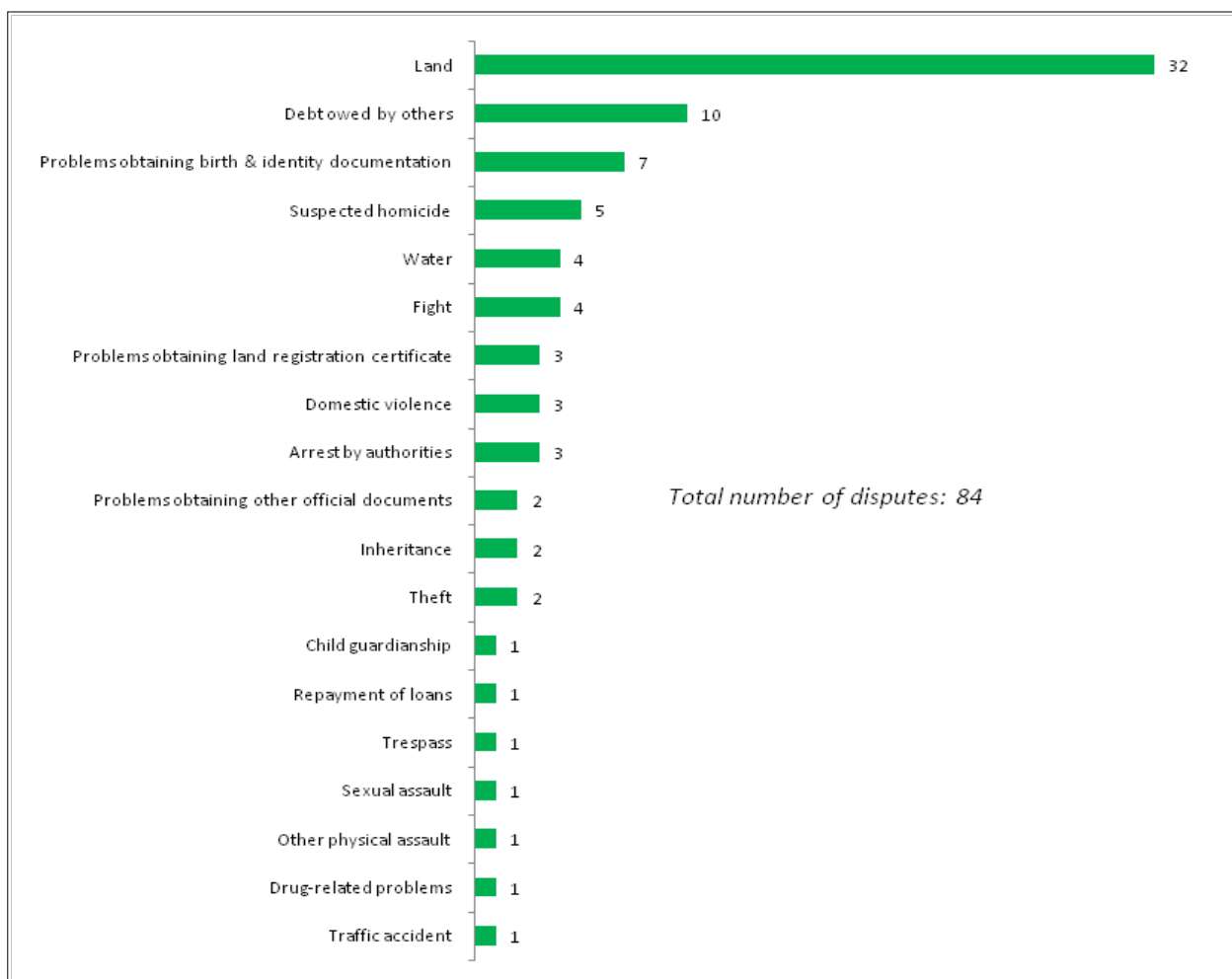
Priority Concerns About Justice

The 84 respondents who had been involved in a dispute during the previous 12 months indicated which they considered to be the most important (Figure 4.3).³⁴ This information was used to track the settlement trajectories of the disputes causing the greatest concern (Chapter 5, Figure 5.1). Land-related disputes were clearly considered the most important.

In summary, only a small proportion of respondents had been involved in at least one dispute in the course of the year. The most common disputes, and those of greatest concern, related to land and tended to be private disputes between individuals. To a lesser extent, disputes over debt had occurred, and these were also between individuals.

34 For the 59 respondents who identified only one dispute experienced over the previous 12 months, the single dispute was recorded as the most important problem.

Figure 4.3 Priority Concerns About Justice



THEMATIC ISSUES

This section examines a number of thematic issues that were apparent in Shan during the course of the study: (i) land, property and housing disputes; (ii) drugs; (iii) issues relating to the legal protection of women and vulnerable groups; (iv) discrimination; (v) loans and debts; and (vi) lack of access to, and regulation of, public services. These issues have a strong association with disputes that were identified in the preceding section. Some of them – such as land-related disputes, drug-related problems, access to public services and discrimination – may be regarded as being sufficiently significant, from the perspective of respondents, to have become a community issue or problem rather than isolated incidents that affected only individuals and/or households.

In addition to the thematic issues explored below, public insecurity, traffic accidents and moral wrongs also emerged as issues of concern. Across study sites, reports emerged of problems concerning public insecurity, such as thefts and fights, most often in connection with drug and alcohol use. There was also evidence of multiple cases of motorcycle theft and one instance of animal theft. In some urban study sites, respondents raised traffic accidents as a concern. Respondents also sometimes spoke about problems that may be categorised as moral wrongs, which they explained often led to other economic and social problems. In two communities, addiction to gambling (and the subsequent loss of earnings and impact on families) was raised as a priority community con-

cern. Cases of adultery were discussed in three study sites, and another community raised concerns about men and youths being intoxicated with alcohol and becoming violent.

Land, Property and Housing

Disputes involving land, property and housing were reported in every study site. Land and land-related property disputes were identified by respondents and community leaders as a priority concern in nearly all rural communities and several urban communities visited.

There are many laws and regulations relating to land in Myanmar, ranging from the 1894 Land Acquisition Act to legislation passed in 2012. Together, these laws stipulate that all land in Myanmar is owned by the State, which has the authority to grant individuals, corporations or development projects the “right to use” land. In 2012, the Farmland Law and the Vacant, Fallow and Virgin Land Law (VFV Law) introduced a system for issuing land use certificates (also known as “Form Seven”), thereby setting up a formalised land market in which registration of one’s land has become increasingly important. The laws also guide compensation for confiscated land. The Farmland Law stipulates that land confiscated for projects of the State, but left unused, will be returned to the person or organisation with the original right to use the land. Section 25(b) of the VFV Law states that farmers who have used fallow land for an established period of time are entitled to negotiation and compensation when this land is involved in a conflict with a third party. The law also states in section 16(b) that land that is unused for four years must be returned to the State.

Within this complicated context with multiple layers of laws, regulations and directives (including confusion around what they stipulate), conflicts have arisen as parties attempt to secure land registration, the return of confiscated land or compensation for confiscated land. In this study in Shan State, the types of disputes

reported by respondents generally fell into several categories: (i) problems arising from historical land confiscation, including difficulties reclaiming land, and disputes arising from return/redistribution of historically confiscated land; (ii) land tenure insecurity, and disputes arising from increasing attempts to formally register land; and (iii) private disputes. In addition, a fourth category of land disputes arises from the context of legal plurality and involves the application of different sources of authority.

Problems Resulting from Historical Land Confiscation

Difficulties Reclaiming Land

Across study sites, multiple cases emerged of farmers attempting to claim back, or obtain compensation for, historically confiscated land. Particularly following President Thein Sein’s address in 2014, these farmers mainly sought help by writing letters to their township administration and the different levels of Farmland Management Committees (FMCs), or by asking for help from members of Parliament. In most cases, respondents reported that they were still waiting for answers.

Respondents described facing a variety of challenges in claiming back land. One was the difficulty in providing proof of “ownership”. One respondent, who had begun replanting on his fields that had been confiscated but left unused, explained:

“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.”

Even having proof of previous “ownership”, for instance in the form of receipts for taxes paid on the land, was not enough to guarantee that a farmer would be able to successfully reclaim confiscated land. In many cases, the confiscated land – though not developed or otherwise occupied by the Tatmadaw – had gone through a chain of possession, and was now occupied by a third party. Farmers attempting to reclaim land sometimes faced competing claims by current possessors or other parties who, with varying levels of legitimacy, based their claims on other sources of law (Box 1).

Box 1

A farmer had five acres of his land seized by the government in 1988, for which he did not receive any compensation. When he heard that people could reclaim their confiscated land under the government of President Thein Sein, he and four other farmers submitted letters of request to the ward administrator, the township and state Land Records Departments, and Parliament’s Farmland Investigation Committee.

At the time of this study, members of the Union Solidarity and Development Party (USDP) were growing crops on the land in order to fund party activities. When the farmers spoke to the USDP township representative about the land, he replied, “The USDP members are working on the land for the public interest, not for personal interest. They have been using that land for four years now, and they have the right to own the land according to the 2012 Land Ownership Law.”* The USDP party members continued using the land.

When, by 2015, the farmers had not received any reply to their letters, they inquired at the ward administrator’s office. The ward administrator told them that the administration did not have the authority to settle land-related issues, and that the farmers should address their requests to the FMC.

Since the USDP was the ruling party in 2015, the farmers waited until the new government came into

power in 2016 to submit their letters of request. They sent letters to the local, township, district and state FMCs, and the local FMC began investigating the case. The farmer expressed his hope: “We have documents – tax receipts – that show we own our lands. So maybe we will get them back.”

* He was likely to have been referring to section 25(b) of the VFV Law.

In one reported case, a third party simply took advantage of his position of power to claim rights over a piece of land (Box 2).

Box 2

Between 2003 and 2004, the Tatmadaw seized 400 acres of farmland in one of this study’s sites, planning to grow rubber plantations. However, the rubber trees were not able to survive in the environment, and the project was abandoned. For the last eight years, the Tatmadaw had been renting out those lands to the local farmers.

A deputy division commander also set aside 54 acres of the confiscated land, fenced it off, and reportedly changed registration of the land to his name. At the time of the study, it was reported that he was attempting to sell the land to others, but the original owners of the land had been informing potential buyers of the land’s history and the land had not been sold.

Members of the National League of Democracy (NLD) helped the farmers submit a request to the Central FMC. The farmers said that they all had high hopes of regaining their lands, particularly so that the young people who have migrated to other countries for work could come back to their village.

Disputes Resulting from Attempts to Reclaim Land

The process of reclaiming confiscated land has at times spawned further disputes within communities. In one study site, there were disputes over land that was provided by the government to resettle people displaced by land confiscation. The substitute land was itself confiscated from other individuals, thus creating a conflict between the resettled population and the original owners when the original owners attempted to claim back their land (Box 3).

Box 3

In 1997, individually used land was confiscated by the government to establish a military compound and a variety of development projects. Every household whose land was taken was allotted one 40 x 60 feet plot of land in the ward, which in turn had been confiscated from others. The allotted substitute land was designated only for displaced households, but respondents reported that civil servants and military officials were also given land.

The people whose land in the ward was confiscated submitted letters to the township administration office, asking for the return of their land and that the resettled people living there be removed. The township administrator assured the resettled people that the land had been legally provided by the government 15 years previously, and that they did not have to worry about being removed.

One man whose land in the quarter was confiscated to resettle others expressed his frustration: "I was thinking, why do they keep grabbing our lands? They grab others' land, and then they provide substitute lands [from] our ward. They don't care about us. Some people have even died waiting to receive back their land."

To the extent that disputes over confiscated or returned land were between individual farmers (i.e., original owners and current possessors who were not in positions of authority or power) or between individuals and the community, local administrators were able to take some action to resolve the disputes. The authority of the local administrators extended only to allocating available or returned land between parties; they could not compel a company or the government to return land. Often, the original owners recovered only a fraction of their confiscated land (Boxes 4 and 5).

Box 4

In 1995, the Tatmadaw seized more than 1,000 acres of land situated near a road, and several hundred acres of land situated farther away. The Tatmadaw gave a concession to the Asia World Company to use a portion of that land for road construction. The Asia World used part of the land to harvest rocks and rented out another part (75 acres) to 16 Kokang farmers.

In 2015, after the original owners of the confiscated land (18 Ta'ang/Palaung farmers) learned that they could claim back land that was unused by the government, they began growing crops on the land they used to own – land that the Kokang farmers had been renting for the past 14 years. At that point, the Asia World had ceased to exist, so the Kokang farmers believed themselves to be the rightful owners of the land.

The dispute between the two groups of farmers was taken to the village tract administrator (VTA), and then to the township administrator. The township administrator decided that each of the 34 farmers would receive two acres, and that the rest of the land would remain community land. The VTA was assigned to allot the land. The VTA allotted each Kokang farmer 1.5 acres of less valuable land (land situated farther away from the

road) and each Ta'ang/Palaung farmer two acres of more valuable land (land situated nearer the road).

The Kokang farmers were unhappy with the distribution and assumed that the VTA was biased because he was Ta'ang/Palaung. They complained to the NLD, and also planned to submit letters of complaint to FMCs, basing their claim on the 2012 laws. Meanwhile, the Ta'ang/Palaung farmers were attempting to reclaim more of the 1,000 acres that were confiscated.

Box 5

The Tatmadaw, by oral statement, returned to a village eight (of 50) acres of land that had previously been confiscated.

A farmer in the village asked the community elders to give him four of those acres, claiming that the confiscated land was originally his. The community elders convinced him to contribute some land to the community to establish a village monastery and school. The farmer agreed, and he and the Dagi signed an agreement in front of the local administrator that stated that the farmer would receive three acres of land and the community would receive the remaining five.

Some respondents complained about corruption in the process of return or redistribution of previously confiscated land. They also feared that government officials would use vacant returned land for their own profit (Boxes 6 and 7).

Box 6

In a study site where the Tatmadaw had confiscated land for a development project, the land was not returned to the owners despite the development project not succeeding. The township Development Supporting Committee (DSC) proposed to use the land for a new town project that would provide low-cost land to the poor, civil servants who had served for more than 20 years and ethnic minority cultural groups. The State Government accepted the proposal.

The township administrator allotted 23 plots (each 40 x 60 feet) to each of the ward administrators in the township. Instead of selling the plots to the target recipients at Ks.900,000 per plot, the plots were sold at four different prices (ranging from Ks.3,000,000 to Ks.6,000,000) depending on their distance to the road.

Respondents complained that the township administration was engaged in corruption, and that the land was not going to the poor. Instead, one rich businessman owned five of those plots of land. Respondents reported that one ward administrator had given two plots to his relatives.

Box 7

In one study site, households that were displaced from their land and resettled in town applied for the return of three acres of their original land that had been left vacant by the Tatmadaw. However, the local and township FMCs decided that the land would be designated community land. The reasons given were that the households had already received substitute land when they were resettled, and that more land disputes would arise if the land were given back to the original owners.

The Dagi asked the township administrator what the land would be used for and he said it would be used to construct a highway bus terminal. However,

the bus terminal was built in another part of the township.

The original owners of the land stated that they would accept the land being used for community development, but that they would not accept the situation if government officials rented or used the land for private businesses.

Continued Abuse of Authority

Although most of the land confiscation that respondents spoke of had taken place in the late 1980s and 1990s, some respondents described the difficulties they continued to suffer from and the abuse of authority that they had to endure (Box 8).

Box 8

A community of Gurkhas made a living by raising dairy cows. In 1988, the government confiscated their pastureland in order to build a prison. Except for a small plot of vacant land behind the prison, there was no land left for them to graze their cows.

The Gurkha families negotiated with the prison officials to be able to use the plot, which they could only access by herding the cows through a relatively narrow lane. Prison officials only allowed the cow herders to use the lane for six months of the year, and they also required the families to pay four cows as a fee. Respondents reported that the prison watchmen would carefully keep a lookout to make sure that none of the cows trespassed out of the lane onto prison property, and would beat the cow herders with a stick if the cows did. The cow herders did not complain to anyone; they tried to ensure their cows did not trespass.

Two years ago, two cows went through the prison's corn crops, and the watchmen caught them. Prison officials met with the owner and demanded that

the owner give the prison the two cows as compensation for the ruined corn. The owner had no choice but to give up the cows, which were worth Ks.800,000 each.

The Gurkha families tried to avoid further problems with the prison by herding their cows in forested areas on higher ground. However, the cows' milk production decreased by half because they became fatigued from having to climb up to the high land, and because there was less grass there. Given these difficulties, two families abandoned raising cows.

Land Tenure Insecurity and Problems arising from Formal Land Registration

Insecurity of Land Tenure

Some respondents reported living with insecure tenure of their land. In one case, land that had been cultivated for 30 years by a community of Pa-O and Taung Yoe people was reclassified as forestland without advance notice to the community. A Forestry Department official planted pine trees on the land, but as the pines did not grow well, the farmers continued to cultivate crops on the land. They attempted to seek help from the Forestry Department and the district GAD, but the only response they received was that all land belonged to the State. The respondents stated that they continued to live in fear that they will be removed from the land.

Respondents in another study site described losing traditionally cultivated land (ဘိုးဘွားစဉ်ဆက်:bo bwa sen seh)³⁵ that was not formally registered. As traditionally cultivated land is sometimes not officially recognised, it may appear as vacant land on land registries, leaving it vulnerable to being purchased by wealthy individuals (Box 9).

35 Literally, "land worked by ancestors".

Box 9

A wealthy man applied to the government and received permission to cultivate 100 acres of land that was classified as vacant land. However, 10 acres of that land was actually being cultivated by local farmers.

The man told the villagers to stop growing crops there because he had received permission to work on that land. The villagers, however, continued to cultivate it. They stated that they have been cultivating the land since their ancestors' time, and that they would never abandon it. They also had nowhere else to go. If the wealthy man tried to remove them from the land by force, they planned to complain to the administration.

The VTA thought that disputes like these arose because of misunderstandings by the Land Records Department. Traditionally, farmers in that area practiced shifting cultivation, leaving some fields fallow after growing crops on them for three years. He said that the farmers usually grazed their cattle on the fallow land, a clear sign to others that the fallow land had an owner. The Land Records Department, however, either did not know or did not officially recognize this practice, leading them to classify the land as vacant and permit others to apply to use it.

Problems Resulting from Attempts to Register Land

Several disputes came to light that had arisen from attempts to register land, and they included allegations of bribery. Given the increasing price of land and the importance of securing land tenure through formal registration, increasing numbers of farmers, as well as other parties, were attempting to formally register land.

In one study site, many private boundary disputes were occurring between residents of a community. Families who had settled on church land 30 years previously were now attempting to create strict boundaries between their homesteads, and they applied for certificates from the Land Records Department. These families explained that the price of land had greatly increased in the last two years, and that they had heard that registered land was worth more as it could be sold to outsiders. As each family began to build brick walls and stake out their plots of land, disputes arose as to where the boundaries between homesteads actually lay. The Dagyi noted that he had helped resolved five such boundary disputes in the last year and a half.

In another study site, residents of a ward located next to a military compound rushed to register their lands and to obtain Form 105 ("permission to live on land") because they had heard rumours that "all land connected to the military compound may be seized at any time because it was owned by the military". When residents visited the military records department, they were shown maps that included part of the ward as part of 500 acres that the military had confiscated to establish a compound. The township Land Records Department itself did not have documentation about ownership of the land, so the residents began to investigate. The residents, who were retired military officials, asked a Tatmadaw representative of the State Parliament for assistance. He too went to the military records department, and was shown newer maps that indicated the military had confiscated only 300 acres. The residents were then able to submit the proper documents to the local FMC and obtain Form 105s.

In a third study site, respondents stated that the township FMC was allowing non-landowners to obtain land use certificates by paying bribes. In one case, a landlady lost half of her compound to her tenants when they secretly applied for land registration by allegedly giving the committee Ks.2,000,000 and serving the committee

members food and drinks. As the tenants were able to show that they had an official government certificate, the landlady had no recourse.

Private Disputes

Several cases of private land and land-related property disputes were settled by community leaders rather than formal land authorities. These included boundary disputes and inheritance disputes (Box 10).

Box 10

A dispute arose among several siblings over how to divide the family land after their parents died.

They asked the Danyi and village elders for help, and they collectively decided that the youngest son had the right to own all the land according to Shan tradition. The other siblings and their families were not satisfied with this outcome and complained to the VTA.

The VTA, who was also Shan, expressed his belief that the tradition was not fair to all the parties, and he proposed to the siblings that the three brothers would each receive one acre while the sister would receive 1.5 acres because she had stayed at home and taken care of the parents before they died. All the siblings were satisfied with this decision.

Legal Pluralism and Conflict

A few cases came to light in which different individuals or groups claimed rights over the same land but used different sources of law or authority as the basis for their claims.

In one study site, two different ethnic groups asserted rights over the same piece of land based on two different sources of authority: one group claimed the land as their ancestral

land, even though they had never cultivated it; the second group claimed the land under the VFV Law since they had farmed the land (with permission from the first group) for five years. The dispute arose when the first group wanted to remove the second. Though the township administration attempted several times to negotiate between the two sides, the groups would not agree to divide the land. The GAD finally announced that no one would cultivate or trespass on the disputed land. Several respondents noted that the conflict negatively affected social relations between the two ethnic groups in that community. "This dispute is also mixed with race and religion," according to one community elder.

A second case (Box 11), which was recounted by a representative of the Kachin CLA, illustrates the conflict between official state law and customary law.

Box 11

A Kachin woman married the second son of a family. The couple had a child together but the husband died soon afterwards. The woman then married her dead husband's elder brother. With her second husband, the woman had two more sons.

When her second husband was very sick, the woman ran away with a Burmese man. Some time later, however, she returned to her husbands' family to ask for a share of the inheritance, stating that she had married two of their sons and had borne them three children.

According to Kachin tradition women are not entitled to any inheritance, especially if the woman has committed adultery, as in this case. With the intervention of the Kachin CLA, and based on "humanitarian grounds", a decision was made to give the woman the proceeds from the sale of half the land plot. The remaining half would be set aside for the three children until they turned 18 years of

age. The woman agreed to this arrangement and an agreement was made in writing.

In 2013, the woman returned to the land and lived in the house. The CLA explained to the local administration that such action was in fact against the CLA's earlier decision and, with the help of the local administrator, managed to expel the woman from the property.

In the meantime, the woman managed to obtain the official documents of tenure over the land that was set aside for her children. She had arranged this with the help of the GAD clerk, and also sold half the land to the clerk. The woman then started fencing off the land plot, and when the CLA tried to stop her, she sued the CLA representatives for trespass and mischief.

The Kachin CLA representative expressed his thoughts as follows: "The CLA's decision was fair, as even the second husband (the elder brother) was not entitled to land. This was a case about inheritance, and the land plot belonged to the parents of the two brothers. . . . The problem is that the government still recognises customary law but they do not encourage the ethnic people to come up with procedures. They are playing a double-faced game. . . . The problem is the lack of procedural law; without it, we don't know how far we can go. . . . When we talk with local officials they don't know about customary law. . . . We don't know which legal system should overrule the other. It is ridiculous that we make a decision based on justice and fairness that can be overridden by government law. Some government laws are unfair. . ."

Drugs

Respondents in nearly all study sites identified drugs and drug-related issues as a priority concern for their communities. They described at length the wide variety of negative impacts of drug use. Some respondents also spoke about the perceived causes for the prevalence of drugs in their communities.

Impact of Drugs

In multiple study sites across southern, eastern and northern Shan State, respondents stated that most of the male youths in their communities used drugs. In one site, respondents estimated that one in three people in their community used drugs, with 80% of households having at least one drug-using family member. Drugs such as heroin and amphetamine tablets were described as cheap and easily accessible, "everywhere and at any time". Respondents identified one ward as a "drug market".

Respondents described increased neighbourhood crime and general insecurity within their communities due to the prevalence of drugs and drug addiction. In order to feed their drug habits, some addicts turned to theft or burglary to get money. Respondents reported mobile phones being grabbed from their owners while speaking on them outside their homes. They also reported that businesses had been burgled and motorbikes had been stolen (Box 12).

Box 12

In one ward, mobile phone shops were burgled and four motorbikes were stolen.

The motorbike and shop owners reported their losses to the ward administrator and the police. The police, the ward administrator and local community leaders (areas-in-charge) went to the homes of

the suspects, four youths, and subsequently found drug tablets.

One of the suspects stated that they stole the motorbikes and phones and resold them in order to have money to buy drugs. The four youths were prosecuted for stealing and using drugs and were sentenced at the township court.

Respondents also reported increased fighting and public disturbances (Box 13), with many indicating that they were afraid that drug users might commit violence while under the influence. One woman in northern Shan stated that some members of her community would not go out after 9pm because of an incident in which several young men started fighting while intoxicated and attacked others who encountered them. In another community, drug use and violence were associated with gang activity.

Box 13

One evening in May 2016, six youths were drinking, using drugs and making noise in a small lane outside a public hospital. The hospital's security guard asked the youths to be quiet so as not to disturb the patients, but the youths continued their rowdy behaviour.

When the security guard scolded the youths again, they entered the hospital and vandalised the premises, tearing up documents and splashing alcohol on the facilities. They also spat at the nurses and doctors.

In some instances, drug use also led to traffic accidents when drug users rode motorbikes while intoxicated. Some traffic accidents had resulted in death (Box 14).

Box 14

After taking drugs, a 14-year-old boy and his friends raced motorbikes in town. The boy hit a 62-year-old man while speeding through a traffic light and the man died at the scene of the accident.

The police held a meeting with the boy's parents and the relatives of the deceased. The widow of the deceased stated that she did not want to file a case with the police because the boy was in school and she believed her husband's death to be due to his bad luck. With the agreement of both sides, the police took a record of the case and placed the boy in jail for two months. Afterwards, he was sent to a youth reform school for one year.

Respondents reported that drug addiction has had a profound social and economic impact on families. Children who had started using drugs provoked arguments with their family members, stole from their parents and generally caused so much trouble that their parents asked the police to arrest them. Several respondents also recognised domestic violence as a consequence of drug addiction (see below) and the financial difficulties addiction created. One woman observed, "Most of the fathers drink and use drugs, and they do not give money for their families' needs. Life is difficult and their wives are getting desperate."

The impact of drugs on children was a common concern among respondents across study sites, with respondents stating that the number of youths and children using drugs was increasing. In addition to tablets, respondents from several sites reported a rise in young schoolchildren sniffing glue. Both types of substance abuse were associated with children dropping out of school, and several respondents expressed fear that drug use will "destroy the young people's future". One woman in southern Shan described the situation in her community as follows:

“Narcotic tablets are easy to get now. Adults who use them first give the tablets to young people for free. And then they sell it to them when they are addicted. Before, tablets cost Ks.500 to Ks.1,000 each, but now you can get three tablets for Ks.1,000, so they use drugs abundantly. The consequences are that the youth don’t finish their education, and sometimes they die early.”

Another respondent in eastern Shan described the helplessness the community felt in their inability to address the problem:

“When I find some students out of school, I always tell them to go to school, but they defy me. Sometimes, they even show unpleasant manners. So, nobody dares to talk with them. I just pray for my child not to be part of that kind of group. High school graduates are [becoming] rare and [there are almost no] university students nowadays.”

On another level, there were impacts on children when their parents became addicted to drugs and could not provide for their families, leading children to drop out of school in order to work and support their families.

Perceived Causes of the Drug Problem

Respondents generally spoke about two issues that they believed contributed to the prevalence of drugs in their communities. The first was that narcotic drugs were being introduced into the communities as part of the market economy. In one study site, poppy farmers (who continued cultivating poppy despite government crackdowns, due to a lack of alternative sources of income) were themselves being forced to accept half of the payment for their crops in narcotic tablets (ꨍꨃꨏ: yaaba) instead of in cash. As there were limited buyers for their crops, the farmers had no choice but to continue to do business with such buyers, who were alleged to be from China. In order to convert the tablets into the cash that they needed, the farmers had to sell

the drugs to their friends and neighbours, effectively turning them into a two-way link in the chain of drug production and trade. The drugs were reportedly sold at low prices – three tablets for Ks.1,000. In study sites in eastern and southern Shan, respondents reported that businessmen from China paid casual labourers and workers in narcotic tablets (yaaba) and that the workers relied on drugs to give them energy and stamina to complete the physical labour.

Second, respondents spoke about the complicity of law enforcement and government officials in drug use and the drug trade. In one study site in southern Shan, where narcotic drugs were described as “very abundant”, community members described witnessing government staff regularly going to a nearby village where it was well known that drugs were available. Respondents stated that government officials would use drugs on the upper level of the dealer’s premises, while community members would use drugs on the bottom level. One man stated that the police department was known as the government department most involved in drug use and trade:

“The former deputy station commander from our township used to pass by my house [to that village] at least four times a week. The other policemen are seen every day. Some sellers even give the high-ranking officers drugs as bribes, and the officers then distribute them to ordinary policemen to sell or to use.”

In one study site in northern Shan, respondents also tied the high rates of drug use to the lack of employment opportunities in their community. One woman stated:

“We wouldn’t go anywhere if we had factories or job opportunities in our country. But we are going out of the country because we have nothing to eat. It makes it worse for us when we come back here with nothing to do. Then people start using drugs and get addicted.”

Respondents reported that there was no one they could turn to for effective help in dealing with drug addiction and its impacts, including property theft committed by drug addicts. One of the elders in a community said:

“Just imagine, there are too many police and they can't even handle the situation. Although we report the crime, we don't know their motorbikes' license plate numbers and we did not know who they are. So, we don't report the losses.”

Legal Protection of Women and Vulnerable Groups

Several issues emerged relating to the legal protection of women and vulnerable groups. The main issues were: (i) domestic violence in the context of marriage; (ii) sexual assault; and (iii) exploitation of migrants.

At a fundamental level, the first two – domestic violence and sexual assault – are about women's safety and security. However, cultural attitudes towards the private sphere of family life, and notions of dignity associated with the female body, often significantly influence how families and communities respond to these issues.

Domestic Violence in Marriage

Domestic violence was reported as a key issue in eight study sites across Shan State, including four where it was identified as a priority concern of the community.

Respondents frequently spoke about domestic violence in connection with, and as a result of, drug and alcohol use. In one community, an area-in-charge estimated that he was approached to help “solve” about three cases of domestic violence each month, and that at least one of those cases would involve physical violence as a consequence of drug use. One female participant described the cyclical nature of domestic violence in her community:

“Men work and earn money, and then they use the money for drugs. Their wives and children are in trouble. Some of the men even torture and [secretly] beat their wives at home. Even if the Danyi arbitrates, it is just temporarily solved. Most of the wives of drug users are facing domestic violence. I would say 90%.”

The same respondent, who was Christian, also described how women had to “tolerate” domestic violence because “divorce is not proper from a religious point of view” and that “no divorce happens” in her community.

Respondents reported that it was sometimes very difficult for women to leave abusive situations. One respondent, who was also the Chairperson of the Myanmar Women's Affairs Federation (MWAF) in the study site, recounted the experience of one woman who lived in the area:

“This woman said to me, ‘Sometimes, my whole face becomes so swollen because of the beating, so that I can't even open one of my eyes or get up from the bed. And then he beats me again, accusing me of being lazy and sleeping instead of working.’ This woman had to carry on in her marriage because she was an orphan. She could not fight back against her husband. She had to patiently bear it without asking help from anyone. Although her neighbours felt sorry for her, they usually stayed away and only intervened if the beating was very serious. So she came to me for help. I warned [the husband] that action would be taken under the law if he continued beating her.”

When women reached out for help, they typically approached those who were physically closest to them, such as neighbours, their 10HHH or the area-in-charge, or someone else whom they felt comfortable with. These people would usually intervene when the beatings were severe, and would try to persuade or warn the husbands not to hit their wives.

More influential members of the community, such as the local administrators, usually became involved when the violence was ongoing (Box 15). These people would similarly attempt to negotiate with the husbands, warning them not to hurt their wives. W/VTAs also had the authority to make husbands sign pledges (khan wun) not to hit their wives. If a husband repeatedly breaks the pledge, the W/VTA can ask the police to arrest the man and take him to court. In at least one case, the resulting penalty in a successful prosecution was simply to confine the man to his house (Box 16).

Box 15

A man who got drunk regularly beat his wife every day. After enduring this for some time, the woman informed the 10 HHH in her area that she could not stay with her husband anymore and wanted to divorce him.

The 10HHH called the husband and warned him not to hit his wife anymore. Despite the warning, however, the man continued to hit her, and the woman frequently complained to the 10HHH. The 10HHH finally referred the case to the VTA.

The VTA would not allow the couple to divorce, and instead “negotiated” the case. When the man continued abusing his wife, the VTA called the couple’s parents and asked the man to sign a pledge (khan wun) in front of them, promising not to hit his wife.

The violence continued at home, and the couple met with the VTA for a third and fourth time. During the third and fourth visits, the VTA told them he “would not negotiate for them again” and would hand the case over to the police if the matter continued.

After that, the couple did not come to the VTA again and instead lived separately. About a year later, the couple apparently reconciled. The VTA called the couple and told them to stay together amicably.

Box 16

While under the influence of drugs, a man kept his wife in a room and beat her severely. She managed to escape and fled to the area-in-charge, who helped her hide in the local administrator’s office. The couple’s baby was still in the house, and the community elders went to the house and asked the man to come out. He emerged with the child and the elders took him to the police station to be arrested.

This man had already signed a document (khan wun) promising not to hit his wife. He subsequently broke the promise and had signed the khan wun three times.

After this last incident, the police filed a case against the man under the 1961 Restriction of Movement and Probation of Habitual Offenders Law. The court ordered the man to stop beating the woman and sentenced him to one and a half years of house arrest (ah kyae kyok).*

* Presumably so that the man would not be able to leave the home to buy and/or use drugs, and would therefore stop abusing his wife.

More than 20 people with experience “mediating” cases of domestic violence, including 10HHHs, areas-in-charge, village elders, W/VTAs and members of CLAs, were interviewed during this study. The majority of these described domestic violence as a family matter that did not need to be settled “out loud” or publicly. They also stated that, after some “negotiation”, the couples usually got along again.

Sexual Assault

Four cases of sexual assault emerged during this study. Only one of these reached the formal justice system and the offender was prosecuted in court. In this case (Box 17), the woman who was assaulted was married and had the support

of her husband, who also wanted to see the perpetrator prosecuted.

Box 17

A married woman was home alone one day when the son of her stepmother came and raped her.

The woman notified the leader of the female youth group in her community. The leader called three other female members of the group together and they confronted the accused, who denied that he had committed the assault. The youth group members then informed the Dagi, who also confronted the man about the incident and threatened to contact the MAAF and ensure that he went to jail. The man admitted that he had raped the woman.

The Dagi assembled the woman, her husband, the accused and his mother. The mother of the accused offered to give the woman and her husband money to settle the case but they insisted that they wanted the man imprisoned.

As the case was not settled, the Dagi referred it to the local administrator. The mother of the accused asked the female youth group leader, the Dagi and the local administrator to mediate so that the case could be settled through compensation. The woman and her husband would not accept payment, however.

The local administrator referred the case to the police. The man was charged in court, with the Dagi and other community leaders serving as witnesses. After two weeks, the accused was sentenced to prison.

The female youth group leader stated, "For us, we wanted to solve the 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 to him to be imprisoned by law, so the Dagi finally handed him over to the local administrator."

Two of the other cases were settled by the victims and their families physically moving out of their communities. In the first of these cases (Box 18), the victim's family wanted to prosecute the perpetrator, a Tatmadaw soldier, but was deterred by the costs and other difficulties that would need to be overcome to pursue the case, as well as by the humiliation that they would suffer. In the other case, in which a man sexually assaulted his granddaughter and made her pregnant, the girl's mother did not want to press charges against her own father despite pressures from others within the community to do so. The Muslim family was pressured by the local administrator and others in the community to leave because "they committed a case that is not acceptable in our culture".

Box 18

Every day, a 16-year-old Shan girl and her friends walked 15 minutes to school, passing by two Tatmadaw units on the way. After the girl's final examinations, her mother noticed that her daughter was not eating or acting normally. The mother confronted her daughter, who confessed that she had fallen in love with a soldier stationed at one of the barracks on the way to school, and that he had raped her. The daughter said that she was afraid to tell her parents because she did not want to bring them any problems. The mother informed her husband about what had happened, and said that she did not want the daughter to marry the soldier and that she wanted the soldier prosecuted. The girl's father became angry and yelled at her, saying that he would kill her.

The parents reported the incident to the area-in-charge and asked for his advice. The area-in-charge, who was a retired soldier, explained that the case could only be tried in a court martial, and that the family would have to show solid evidence of rape. He also advised them to think about the dignity and image of their daughter.

The parents decided that they did not have the acquaintances, networks, education, awareness or

money to be able to successfully pursue the case. They also wanted to maintain their reputation and did not want to be humiliated further, and so the family moved out of the area.

Exploitation of Migrants

Two cases highlighted the vulnerabilities of people who, due to a lack of economic opportunities at home, travel abroad for employment, often without the necessary official documentation. The first case (Box 19) illustrates primarily the issue of labour and wage exploitation, and the arduous challenges that people face in achieving some form of redress for exploitation. It also demonstrates the remarkable resilience and resourcefulness of people in their pursuit of justice and highlights how personal connections or relationships continue to play a significant role in helping people access justice. The second case (Box 20) involves migrants who may have been subject to human trafficking and highlights communities' limited ability to access help.

Box 19

Two brothers from northern Shan were recruited by a couple – recruiting agents – from Yangon to work as seamen on a fishing vessel. Given that the younger brother was only 17, the couple forged a Citizenship Scrutiny Card that stated that he was 18, the age required to work as a seaman.

During the brothers' time on the ship, the agents were supposed to send their salaries home to their families. Instead, they sent only half of the older brother's salary, keeping the other half and all of the younger brother's salary. At this time, the brothers and their parents did not know that the brothers' wages were being stolen.

The younger brother became very depressed working on the ship and became mentally unstable. After a year and eight months, the two brothers returned to Yangon. The agents did not meet them in Yangon as they were supposed to, and the brothers had to find their own way back to northern Shan.

Back home, the younger brother's mental health continued to deteriorate. At a loss as to what to do, his mother asked her younger sister for help because she was educated and had a daughter who lived in Yangon. The aunt took the brothers to Yangon and asked the agents to help pay for the medical expenses needed to treat the younger boy's condition. The agents agreed to ask the company for the money, but demanded that they be entitled to keep half of the amount. The aunt refused, insisting that they should receive the full amount for the expenses.

The boys' aunt then sought help from the Yangon Maritime Association but was told that it could not help because the brothers had worked without official documents. The aunt did not know who else to ask for help in Yangon. A friend of the aunt's daughter, who was close to members of the 88 Generation Students Youth Association, advised the aunt to consult them. With the help of the 88 Generation Students Youth Association, the aunt was connected with the Human Trafficking Prevention Association (HTPA).

The HTPA investigated the case and questioned the agents. It was only then that the aunt and the brothers learned that the agents had withheld wages. The agents threatened to sue the brothers for working with forged documents. The HTPA informed the district police of the case and the police summoned both sides to the station. When the agents did not show up, the police handed the case over to the ward administrator where the agents lived.

The ward administrator called the two parties to meet at his office. The agents arrived early, and the ward administrator convinced them to return the withheld wages of the younger brother, plus an additional USD700 to pay for his medical expenses. One month after the aunt began seeking help, the brothers finally received some recompense. The younger brother is now undergoing treatment at a hospital in Yangon.

Box 20

Three years ago, four women from southern Shan moved to China to find work. Members of their community reported hearing that two of them were forced into marriages with Chinese men. They had no news about the other two women and feared that they had been trafficked.

The Dagyi explained that, "We have heard about the Anti-Human-Trafficking Police, but we have no idea where to go to directly to ask for help. We just post things on Facebook and share among friends. That's all we can do. We still haven't heard anything about them."

Discrimination

In a majority of study sites in southern and northern Shan, some respondents reported facing discrimination, and others specifically reported difficulties obtaining identity documentation. In general, these respondents belonged to ethnic or religious minority groups within their local areas.

In a rural study site in northern Shan, Kokang respondents reported feeling discriminated against by their local administrator, who was Ta'ang/Palaung, because they had moved to that part of northern Shan in the last few decades. Respondents reported being refused permission letters for travel by their local administrator, who stated, "You are not originally from here, so I can't give you a recommendation letter." Respondents also felt that their Dagyi, a Kokang, did not stand up for his community. Box 21 presents an example of discrimination reported by Kokang respondents.

Box 21

A Kokang couple owned 1.28 acres of land, which was valued at Ks.8,000,000. Some Bamar residents from the community informed the local administrator that they wanted to use stones from that land to build roads, and began excavation.

The Kokang couple complained to the Dagyi, who then informed the VTA. The VTA accepted the Bamar excavators' proposal to pay Ks.3,000,000 for the land. The Dagyi took the money to the Kokang couple but they did not accept it, stating that they did not want to sell their land. The Dagyi took the husband to see the VTA, who told him that the couple had no choice but to sell their land, and pushed him to accept Ks.4,000,000 for the land.

When the husband arrived home, his wife was unhappy to learn of the transaction. She visited the Dagyi and said to him, "We have only that land to farm and earn a living. That is why we do not want to sell it no matter how much money they want to pay. If they want the stones, they can take out the whole mountain. We will permit that. But after the stones are taken, we want to have the land back so that we can farm." The Dagyi responded angrily to the wife, "The case was already decided by the administrator. How dare you say this?"

The Dagyi reported to the VTA that the couple had acted in defiance of him. The VTA called the couple to his office and imposed a fine to a value of five chairs for speaking against the Dagyi. The Dagyi, however, imposed a fine to a value of 10 chairs.*

* As gatherings and meetings take place at the VTA's residence, the VTA is expected to make space for those who attend. There is a (one-off) financial cost for the purchase of chairs. The fine as punishment was measured in terms of the cost of chairs.

In an urban study site in northern Shan, Bamar respondents reported feeling discriminated against because they were not included in community social and religious activities. They also felt that the local administrator and community elders were biased towards Shan residents in disputes between Bamar and Shan residents. One man said:

“We moved here 20 years ago, but the Shans don’t ask us to work with them or to go together to the monasteries. When Shan and Bamar people argue, the elder of this area favours the Shan people as he is Shan. They speak in Shan language, which we can’t understand, and solve the problems by themselves. Since we are the minority here, we can’t reply so we just let it go.”

In another urban study site in southern Shan, restrictions were placed on Muslim residents and visitors. For example, Muslims were not allowed to visit that ward (Muslim residents and visitors were only allowed to stay in two of the six wards in the township), and Muslim residents were required to inform the area-in-charge, the community elders and the local administration when they had visitors. The community had also recently expelled a Muslim family from the area after a man raped his granddaughter. The local administration prohibited the family from selling their land to other Muslims and required them to sell it only to Buddhists. One Pa-O man from the community said:

“Muslim people are very different from our nationality, our religion and also [in] mindset. They are harsh. They kill cows, and they rape their own granddaughter. We never heard about something like that before, but they do it. It is scary, so it is best not to be in touch with those people.”

A Bamar woman from the community said, “I heard about conflicts happening in the other regions, such as in the lower region of Myanmar. No conflict happened here, but I think the administration did not let them stay in the ward as a precaution.”

Civil Documentation

Minority groups also spoke about the difficulties they faced acquiring civil documentation. Many respondents stated that they could not obtain identity documentation, while others were only able to do so after navigating lengthy, complicated processes and making additional payments.

In one urban study site, Gurkha respondents reported that only 10% of their community had identity documentation, which had been acquired in 2014 when a government directive instructed the issuance of such documents to children of retired soldiers. In another rural site, only one Gurkha household in a community of 100 Gurkha residents had managed to acquire Citizenship Scrutiny Cards (CSCs). A respondent from this family reported that her family was required to pay Ks.300,000 to initiate the process, an additional Ks.1,000,000 during the waiting period, and then additional sums of Ks.100,000 to each government official when the CSC cards were ready. The entire process, which included multiple trips to the immigration office and a court declaration, took 10 years. In the same study site, respondents of Chinese descent were more successful in acquiring documentation. They estimated that 80% of residents of Chinese descent held CSCs. These respondents described spending one month’s salary in order to obtain a CSC.

Hindu and Sikh respondents expressed disappointment at being excluded from the Union Government’s 100 Days Special Project to issue CSCs. They felt particularly let down because they had initially been told that they would be able to acquire CSCs through the Special Project. One respondent expressed his frustration thus:

“I have participated as a leader of the blood donor volunteer group. I have donated my own blood 115 times, and I have been awarded a prize for social work three times. I was born in Myanmar, and I have always served [this] country. That’s why I should

get my own CSC. They should issue my CSC because I was born here and I am not living abroad.”

Ta’ang/Palaung respondents also reported facing challenges in acquiring CSCs, despite belonging to an officially recognized ethnic group. One respondent noted that many Ta’ang/Palaung people had to travel from remote areas on difficult roads, where they were sometimes attacked by bandits, in order to reach the immigration office, which was located in a neighboring township because no officer was posted in their town. Furthermore, many Ta’ang/Palaung people were poorly educated and were not fluent in Burmese; they felt intimidated about interacting with government departments. Respondents also perceived that the township immigration office did not prioritise processing the CSCs of Ta’ang/Palaung people because they could only afford to give Ks.20,000 in additional payments (compared with Ks.300,000 reportedly paid by those of Chinese descent). Ta’ang/Palaung people in this township relied on a Ta’ang/Palaung woman – who was fluent in Burmese and a member of the ward MAAF – for assistance in dealing with the immigration office.

Respondents also described various adverse impacts and difficulties resulting from their lack of civil documentation. One Gurkha respondent stated that she was not able to visit her elder brother in prison because she did not have a CSC. Another young woman reported that she was unable to withdraw money – sent by her parents for school fees – from the bank without a CSC, and had to delay her education by one semester as she was unable to pay her school fees on time. A Hindu respondent also described the difficulties he faced when he tried to travel: “I could not go by airplane, and I also could not stay at hotels. To travel, I had to apply for permission letters, which were just for 14 days. If I travelled for more than 14 days, I would be prosecuted for it.”

The lack of civil documentation also had an im-

pact on the children of those who did not have documents. In one instance, a Gurkha man, married to a Pa-O woman, could not obtain a birth certificate for their infant as he did not have the appropriate identity documentation. “We are afraid that there will be future difficulties for our son with regards to education or health issues,” he said. His wife added: “I did not know this would happen. Now I feel like maybe I was wrong to marry someone who is not of the same race.”

Loans and Debts

Disputes involving loans and debts were reported by respondents in half the study sites, and across all parts of Shan State. In five communities, the issue was sufficiently significant to be raised as a priority community concern. One community leader estimated the level of indebtedness at 75% of his community.

An underlying cause of cycles of indebtedness is the difficulties that people face in accessing capital. In order to access the money that they required, people resorted to various methods of borrowing, and often at high interest rates. Respondents cited a number of reasons for borrowing money:

- Education expenses for children;
- Capital for farming inputs;
- Liquidity for vendors;
- Start-up capital for businesses;
- Repayment of loans in collective savings or lending groups;
- Sustenance or survival (as a consequence of income spent on gambling).

Local administrators and community elders often mediated disputes that arose from borrowing and lending. Many of these transactions occurred without official documentation, and local administrators reported difficulties settling disputes that arose out of informal lending. In three study sites, local administrators

stated that they refused to help settle disputes that were not officially documented. One local administrator, who estimated that he was asked to settle between four and eight such cases each month, resorted to posting an announcement at his office that he would not help settle such disputes unless the disputing parties possessed official documents. However, the local administrator and other local leaders continued to mediate disputes in their personal capacities.

Residents in study sites coped with the lack of access to capital in several ways, including: (i) borrowing on an individual basis, including purchasing on credit and mortgaging property as collateral to borrow money; (ii) participating in “collective savings” or “borrowing/lending” groups; and (iii) participating in government cooperative loan groups. Disputes arose from these types of borrowing and lending activities.

Borrowing on an Individual Basis

People often borrowed and lent money on an individual basis, with people borrowing from relatives, friends, business people, colleagues and others with capital. Lenders generally lent to acquaintances (rather than strangers) as a risk mitigation strategy. When disputes arose, local administrators were sometimes involved as mediators, but some lenders reported giving up trying to collect money owed to them.

Some individual borrowing was in the forms of purchasing on credit and mortgaging property.

Purchasing on Credit

In one study site in northern Shan, where a large market was located, many small-scale vendors bought goods on credit from wholesale vendors with a daily interest rate of 30%, then resold these goods in the market. These small-scale vendors included those who sold meat, fish and vegetables, as well as those who operated small food stalls (Box 22).

Box 22

A Shan woman sold poultry at the market. Each day, it cost her Ks.30,000 to buy the chickens that she would subsequently sell. She started each day with only Ks.10,000 in capital, so she had to buy the remaining Ks.20,000 worth of chickens on credit from the poultry wholesaler.

At the end of a good day, she earned Ks.45,000. After repaying the poultry wholesaler Ks.20,000 for the chickens she bought on credit, and an additional Ks.6,000 in interest, she was left with a profit of Ks.9,000.

Sometimes, when she had a day of poor sales, she was forced to spend the money set aside for household expenses instead, forcing her to buy more on credit. She stated that she tried very hard to pay off her loans as she did not want to have to borrow from moneylenders.

Disputes generally arose when borrowers were not able to pay back the amounts they borrowed on credit. In the market referred to in Box 22, the municipal department staff who helped run it, influential vendors or private security agents (hired by the market executive committee) would help to mediate disputes by admonishing both sides.

Mortgaging Property as Collateral

In a rural study site in southern Shan, respondents described borrowing money by mortgaging land or using gold as collateral. Due to the cyclical nature of farming, farmers were only able to access cash after harvesting and selling their crops. In order to purchase the necessary inputs for farming, pay hired labourers and pay for ongoing daily household expenses, they had to put up their land as collateral to access funds. If a farmer were unable to repay the loan immediately, the accruing interest would result

in the farmer having to pay back many times the principal amount. In several cases, farmers lost, or nearly lost, their lands as they were unable to repay the principal loan amounts and the interest accrued (Boxes 23 and 24).

Box 23

In 2014, a farmer used his plot of farmland as collateral for a loan of Ks.100,000.

At the time of this study, the farmer was indebted to the amount of Ks.700,000. As he cannot afford to pay back the continuously increasing amount, he has essentially lost his land, the market value of which was estimated at Ks.200,000.

Box 24

Six years ago, a farmer needed Ks.50,000 to pay for some household and agricultural expenses, and so mortgaged two and a half acres of his land to a man from his village. The interest rate on the loan was 10% per month, and the farmer would only be able to redeem his land after he paid off the loan in full, including the interest.

That year, the farmer was unable to receive a good profit from the sale of his produce and so could not repay his debt. The interest rate continued to accrue, to the extent that the farmer owed Ks.1,000,000 to the moneylender.

Finally, the farmer's mother-in-law stepped in because she did not want a stranger to own their land. She paid the moneylender Ks.1,000,000 and ownership of the land passed to her.

In the same study site, people also borrowed money using gold as collateral at an interest rate of 3%. If a resident had no property or gold to use as collateral, the interest rate was 8%. One community leader lamented, "When there is lending at such high interest rates, it is as if we are feeding strangers by breaking off our own food portions."

Borrowing/Lending Circles: Collective Savings (Private)

In four urban study sites there were borrowing/lending circles that respondents described as "collective savings".

In general, a minimum of 10 and a maximum of 30 people who are known to each other formed a group. The group would decide on a target sum that would be collected on a regular basis, typically every month or every 15 days. The sum would be divided up into portions, with each member contributing one or more portions according to their economic ability. During each cycle, generally, one member would be entitled to take the entire sum (with potential reductions to the amount – see below). Within the group, one person – usually the organiser, and a person trusted by the rest of the group – would be designated treasurer. This person would be allowed the first turn at taking out the pooled amount.

In one variation of this collective savings process, the other members (excluding the treasurer) would participate in a "lucky draw" to determine the order in which they would be allowed a turn at the pooled amount. A member who committed to contributing multiple portions of the sum would be entitled to the corresponding number of turns. However, a member who wanted to access the pooled amount before his/her turn could propose and participate in an auction to "jump the queue", in order to be next in turn. During the auction, members who wanted to be next in turn to access the pooled funds would bid amounts – lower than

the full amount – that they would take out in the “jumped” cycle. The member who put in the lowest bid would “win” the auction and be entitled to the nominated amount in the “jumped” cycle. The difference between the entire pooled amount and the winning bid would be distributed to the rest of the group, according to their respective portions. The “jumped” cycle was treated as that particular member’s turn at the funds. The result was that someone who urgently needed money before his/her turn would be able to take it, but at a cost as the amount was less than what he/she was otherwise entitled to. Assuming that all cycles were completed, such a member would ultimately have contributed a larger amount to the group than he/she was able to access (Box 25).

In a second variation of the collective savings process, there was no established order or queue for taking the pooled amount. Instead, following the first cycle when the treasurer took the entire sum, members would participate in an auction during each cycle to determine who would be entitled to the funds each time. During the auction, members would place bids on the “reductions” that each member would have to contribute to the cycle. The member who proposed the highest “reduction” for each member, or in other words who proposed the lowest pooled amount to be taken out, would win the bid. For example, in a group of 10 where each member must contribute Ks.100,000 (for a total of Ks.1,000,000) each cycle, the member who put in a bid of Ks.20,000 will “win” the right to the pooled amount (of Ks.800,000) over another member who put in a bid of Ks.10,000. The amount that each member must contribute during that cycle would be reduced by Ks.20,000 to Ks.80,000. The member who “won” the bid would take Ks.800,000 rather than the original amount of Ks.1,000,000. In subsequent cycles, members who had not yet had their turn would participate in subsequent auctions. Members who were not in urgent need of money did not have to participate in the auctions. This meant that such members were able to

take out the entire amount when their turn (towards the end of the cycle) came around, and at the same time benefited from the “reductions” in amounts that they had to contribute each cycle.³⁶

One respondent explained why she and other members of her community participated in collective savings groups:

“It is very difficult to get a large amount of money from one source. We need the capital for our businesses, but no one provides credit like that. Anyway, if we try to save money by ourselves in our homes, it will just get spent. So that is why we save collectively in a group with others.”

Disputes generally arose when a member of a collective savings group ran away from the community after taking the pooled funds, leaving the remaining members who had yet to have a turn at a loss. Some local administrators and community leaders tried to mediate such disputes in their personal capacities. In at least one community, members of collective savings groups used local uniformed police officers to force the remaining members to continue contributing to the circle.

In general, however, respondents felt that they did not have much recourse when problems arose. Some noted that they did not report such disputes to the police, nor did they try to seek help from government officials because the collective savings groups operated without official documentation or authorisation. One respondent stated, “We have heard of cases of [members] running away and cheating in collective savings groups, and all we can do is pray that it does not happen in our group.”

The workings of a typical collective savings group (of the first variation), and the problems that arose when a member ran away, are illustrated in Box 25.

36 Respondents described this model as “saving on bid”.

Box 25

A woman who ran a small, but popular, restaurant in front of the market was chosen to be the treasurer of a collective savings group. The members of the group decided that the group would run for 15 months, with one cycle occurring every 15 days. The target sum was Ks.9,000,000 collected each cycle, with 30 “portions” consisting of Ks.300,000 per portion.

The restaurant owner elected to contribute three portions (Ks.900,000), which also meant that she was entitled to take out the pooled amount three times (in three cycles). Since she was also the treasurer, she was entitled to take money from the group first; she used the Ks.9,000,000 to extend her business and also bought a new car.

The savings group ran smoothly for the first three months, with the restaurant owner collecting and paying out Ks.9,000,000 each month. At the 7th cycle, however, one member – the owner of a pork shop – refused to give the restaurant owner the money for her two portions (Ks.600,000) because the restaurant owner had bought pork on credit from that member. To repay her debt to the pork shop owner, the restaurant owner needed to cover the pork shop owner’s contributions to the circle (Ks.600,000).

As the restaurant owner was unable to pay the pork shop owner’s portions in addition to her own (a total of Ks.1,500,000), she bid in an auction to “jump the queue”, using her second entitlement to take money from the group. Given the auction process, she was only able to take out Ks.6,000,000, which she used to pay her own and the pork shop owner’s portions (totaling Ks.1,500,000).

Although the auction enabled the restaurant owner to solve her immediate problem, she was still unable to put in her three portions at the 8th cycle. On the day that she was due to pay the member whose turn it was to take out money, she left town and avoided the community because there was not enough money to pay that member.

The restaurant owner returned to town after the 8th cycle was over, and attempted to again collect money for the 9th cycle. Since she had not contributed money during the 8th cycle, however, members who had already had their turns (in the 2nd to 7th cycles) refused to contribute further. The restaurant owner tried to cover the portions of those who refused to contribute. As she did not want to gain a bad reputation in the community, she sold her property and her house to try and resolve the financial problems of the collective savings group. By the 10th cycle, however, she felt that she could no longer handle the financial issues and moved to another region.

There were still 20 cycles left in the collective savings group, and the members who had yet to take out money complained to the local administrator and at the local police station. The respondents said that the authorities could not do anything, however, because the savings group members did not have any official documents.

Cooperative Loan Groups (Government)

In one study site, respondents described issues stemming from involvement in a government cooperative loan group (ဆောင်းဟောမန်: hsaung hae man) that began in June 2014, with the original capital from government funding. Committees for the loan group were formed at the ward and village levels, with a chairperson and other executive committee members chosen from community leaders and government staff.

The loan group had more than 300 members: anyone in the community who was at least 18 years old and who could show documentation that they were part of the community (such as a household list) could become part of the group. The membership fee was Ks.5,000 and members were entitled to borrow Ks.100,000

at an interest rate of 1.5%. After six months, every borrower had to repay their loan with interest (totalling Ks.109,000). Repaying the loan enabled the member to borrow money at the next cycle.

Given that each member was also required to save Ks.10,000 per cycle, however, meant that each member only borrowed Ks.90,000 per cycle in reality. The members were also put into small groups of five, with each group taking collective responsibility for the debts of the other members in the small group. The members' savings, which earned 1% interest each month, could only be withdrawn when a member left the group at the end of the loan cycle.

Respondents stated that some people had difficulties repaying their loans at the end of the lending cycle, and borrowed from informal moneylenders at higher interest rates of 8% to 15% in order to pay back the cooperative loan group. They said that some households borrowed Ks.200,000 to Ks.500,000 from informal lenders each cycle as multiple members within the household took out loans from the cooperative group. Since many borrowers were vegetable vendors who needed access to capital in order to run their businesses, they always tried to repay their loans to the loan group so that they could again borrow money, even if it meant borrowing at high interest rates. This perpetuated the cycle of indebtedness.

Respondents also complained about a new system implemented by the executive committee that allowed late repayment of a loan (up to 10 days) with an additional Ks.10,000 in interest. The late repayment, however, also meant that the member had to miss obtaining a loan in the next six-month cycle. Several respondents voiced their dissatisfaction, and also alleged that the group leaders were taking advantage of the group for their own gain:

"That interest rate is very high. Ks.10,000 in interest is too high for just 10 days. But those

who have a difficult time earning money have no choice but to do that. The cooperative group leaders and government staff are manipulating the process by taking the money of those who cannot pay in time and who have to pay the high interest, and then lending that money to outsiders with interest. This group is supposed to help eliminate poverty, but how is it helping? With this model, the poor will be poorer than before."

Public Services: Access and Regulation

In several study sites, respondents reported having problems accessing public services and were concerned about the regulatory duties of municipalities. Their concerns fell into two categories: (i) difficulty accessing public services, including corruption in the provision of services; and (ii) harmful health effects resulting from corruption and a lack of regulation.

Difficulties Accessing Public Services

Local communities in three study sites reported having difficulties accessing sufficient water for their daily household and/or agricultural needs and spoke of the impacts of water shortage. In order to access water, communities either organised themselves to set up committees to regulate access, or pooled funds to provide monetary incentives to government staff to ensure supply (Boxes 26, 27 and 28).

In all these cases, respondents reported having no effective avenues for redress. They sometimes attempted to improve their situation by paying additional money to obtain what they needed. In other cases, they could only try to mitigate the effects of water shortages and had to cope with their situation.

Box 26

Parts of one township were provided with water pumped from a spring six miles away. The residents were dependent on government staff who came around to open the taps so that the residents could collect water once a week.

Residents living in one area of town reported having to wait until midnight for the staff officer to come around to their section. They discussed the issue among themselves and collected Ks.15,000 (Ks.1,500 each from 10 households) as a tip for the government employee, so that he would come to their area regularly, and earlier in the day.

Some of the households stopped contributing towards the tip, which resulted in quarrels between those households and the person collecting the contributions, who ended up covering their portions.

Box 27

In 2014, a Tatmadaw unit built a dam and lined the river with concrete walls. Residents of the surrounding villages could no longer freely divert water from the river. They could only access the river through one small side channel, which led to competition over the limited water access.

A committee comprising the local administrator, the Dageis and the village elders was formed to manage the distribution of water to the various villages. The decision was made that the taps would be opened for villages/farmland situated on higher ground for five days, and then the taps would be opened for villages/farmland situated on lower ground for four days (because the water pressure was higher). The water flow would alternate between the high and low-lying villages.

Since five days of water access was insufficient for

villages living on higher ground to irrigate their fields, they sometimes did not turn the taps to enable the low-lying villages to have their turn. This resulted in disputes between the farmers of different villages. One Dagei helped to mediate these disputes by trying to help farmers from his village get the water that they needed, and also by negotiating for both sides to access water equally. He observed that, "There is no other way but to accept the decision. The other side needs water too, and it is not possible to carry buckets of water."

As a result of the water shortage, the farmers' yield of onions decreased. The onions were also smaller than usual and rotted more quickly, so they could only be sold at a low price. Fifteen villages in all were affected by the water shortage.

Box 28

Farmers from three neighbouring villages depended on a stream that flowed from a dam. However, there was not sufficient water for all the farmers to use as much as they needed – if the upper lying farms used all the water they needed, there was not enough left for the lower lying farms.

In order to prevent conflicts, a Water Distribution and Management Committee comprising community elders and 10HHs from the three villages was formed to manage the distribution of water. The Committee decided that farmers would have to pay Ks.5,000 each time a farmer wanted to irrigate one plot of land. In addition, farmers would have to pay a "water tax" of Ks.6,000 per plot each year.

Respondents reported that the Committee did not manage water distribution in a fair manner over the last couple of years. They reported that farmers who could afford to pay more to the Committee were able to access more water, whereas those who could not

afford to pay were not able to get what they needed. One farmer who could pay the Committee Ks.60,000 was able to take as much water as he wanted. Quarrels between the farmers occurred as a result of the water shortage.

One farmer explained that there was nowhere they could go for help: "If we report their corruption, we will only lose face. It is hard for us daily labourers to go to court every day. They never solve cases within a short time. That is why we do not want to report it."

Respondents in two communities also spoke about the difficulties they had accessing electricity, and the ways in which some had sought remedies for the situation. Those who did not have fair access to electricity wrote letters of complaint to the relevant government departments at the township level, or sometimes brought a case to court.

In the first community, a development project funded by the Union Government led to the electrification of the township, and a township electricity committee was formed to manage distribution. Members of the committee included local administrators and a member of Parliament. In addition to setup costs incurred by individual households, the committee also collected another Ks.250,000 from each household, totalling between Ks.500,000 and Ks.700,000 for each household. The community soon learned from an Electricity Department official, however, that the government had subsidised the project, and that communities should not have had to pay to access electricity. Upon learning this, some households brought a case against the township electricity committee in court, and others wrote letters of complaint to the Ministry of Electric Power at township, district and state levels. At the time of the study, the court case was still pending and no responses to the letters had been received.

In the second community, respondents reported two issues with electricity distribution. First, households with close relationships with government staff were able to use government-subsidised electricity (intended for government staff), paying Ks.60 per unit instead of Ks.100 per unit. Second, households accessing electricity through the common meter noticed a price increase two years ago, from Ks.100 per unit to Ks.140 per unit, even though neighbouring villages continued to pay for electricity consumption at Ks.100 per unit. Some residents sent a letter of complaint to the NLD.

In another concern about access to public services, one respondent reported having to pay money in order to register land. In addition to paying the local administrator Ks.50,000 to obtain his signature on the purchase agreement, the respondent was asked to pay another Ks.200,000 (Ks.50,000 per acre, for four acres) when she attempted to register her land at the township Land Records Department. When she commented that the land registration process was a government process, and that officials should not be asking for extra payments, the officials reportedly replied, "Don't you believe us? Or do you want to complain?" As the respondent explained:

"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."

Effects of Corruption and Lack of Regulation

Respondents from two study sites spoke about problems resulting from activities that occurred due to a lack of regulation and/or corruption. These activities had harmful effects on the health of the residents in the communities. The residents had complained to the local administration but the administrators were not always able to effectively resolve the issue.

In one study site in eastern Shan, respondents reported that a local stream, which was their main water source for agricultural needs, was being poisoned by a gold mine that operated upstream. When chickens and ducks raised near the stream began to die, the villagers complained to the local administrator and sent a water sample for testing in Thailand, where a laboratory confirmed that the water was poisoned. At the time of this study, the villagers were awaiting results from tests of a water sample by the township Water Resources Department. The residents planned to report the results to the township and district administrations. In the meantime, the farmers were unable to grow rice in the paddy fields fed by the stream.

Residents from the same community also described the nuisance caused by a petrol station operating in the local area. The station emitted bad smells and the residents were also worried that petrol would permeate the soil and contaminate the underground water, which was a water source for the community. Several residents complained to the local administrator, who told the owner of the station (a resident in another location) to move away. The petrol station owner, however, refused to move. Community members collected signatures and reported the issue to the township administrator, who reported it to the district administrator. Respondents noted that no action had yet been taken to address the situation.

In a study site in southern Shan, a poultry farm was built by a wealthy Bamar man in a community of Gurkha residents. Residents of this community reported that the large farm, which included five coops measuring 20 x 50 feet each, attracted an enormous number of flies and gave off a bad smell, making it difficult for them to breathe. One man who visited the community vomited from the stench and the flies. Another family reported that their children who were born after the farm became operational were constantly sick with cholera and skin diseases and required hospitalisation.

The community reported the problem to the local administrator and also sent petitions to the township Development Supporting Committee (DSC) and the township Health Department to investigate the issue. A representative of the Health Department visited the poultry farm and merely asked the owner to operate the farm with health precautions. Community members sent another letter of complaint to the DSC. The local administrator, together with some residents, visited the DSC office and asked the committee to compel the poultry farm owner to halt operations as it was making the residents sick. Government officials from the DSC and the Health Department, and respected persons from the community, inspected the farm and discovered that dead chickens were being disposed off carelessly, contributing to the stench and disease. The authorities prohibited the owner from operating the poultry farm. Six months later, however, the farm was operational again, causing the residents to wonder about the nature of the poultry owner's connections.

FORMAL JUSTICE SYSTEM

Justice sector officials described dealing with some of the issues described above – land disputes, drugs, the legal protection of women and vulnerable groups, traffic accidents and collective savings groups. Some officials also spoke about issues such as unlawful association and cases relating to the 1945 Police Act.

Land

GAD officials described how land and land-related disputes were dealt with, including through FMCs (Chapter 5).

Drugs

In general, judges, law officers and police officers stated that drug and drug-related offences constituted a significant proportion of

their caseloads. At the district level, it was estimated that between 80% and 90% of cases processed through the courts were for drug-related offences; some township courts also reported a majority caseload of drug-related charges.

Charges brought under the 1993 Narcotic Drugs and Psychotropic Substances Law depend upon the weight/volume/quantity of drugs found on a person. Where cases were prosecuted at the township court, defendants were generally deemed to be in possession of drugs for personal use.³⁷ Defendants prosecuted at district courts were generally charged with trafficking, and occasionally production, of drugs. At the district level, those charged with drug trafficking were also frequently charged under the provisions of the 2012 Export and Import Law (for use of unlicensed vehicles) and the 1878 Arms Act or the Shan Arms Ordinance (for resisting arrest with arms).

Justice sector officials noted that, in general, drug users who were prosecuted were male, ranged in age from young adulthood to middle age, and were mostly of low income and education levels. In certain parts of Shan State, particularly the bigger towns such as Tachileik and Lashio, there was a greater variety of drug defendants, including a larger proportion of women and also children. A township law officer explained in some detail the process by which an accused would be charged:

"The police arrest someone in possession of drugs. According to the amount seized [on the person], they request a remand to detain the accused and seek advice from law officers. We check if there is sufficient evidence, and then check the First Information Report, the complaint letter [by the arresting police officer, detailing information such as the date, location and circumstances of arrest, witnesses present, searches conducted, evidence seized, etc.], the record of the weight [of the drugs], the urine

sample, external signs and symptoms [of drug use] on the accused person's body, confession or testimony of the accused and/or witnesses, photos, the search form and whether the accused person is a registered drug user. If everything is complete, the police will charge the person with sections 15 and 16(a) of the Narcotics Law. The charge under section 15 is approved once the result of the urine test is received. Before the end of the remand period, when the investigation is complete, the case is presented to court. ... After hearing the plaintiff's side, including any witnesses, the judge makes a decision to approve or discharge the case. At this stage, some people confess and the judge can proceed to a final decision, sometimes immediately; sometimes they adjourn the case. If the person denies the charge, the proceedings continue and the defendant and defence witnesses are examined."

One law officer stated that drug users were "always" imprisoned. A township judge explained that, "Nobody [in this township] gets the five-year maximum [sentence]. I give sentences of four years to everyone without discrimination. They are all adults so they should know the consequences."

In Tachileik in eastern Shan, Myanmar Police Force (MPF) officials explained the cross-border dimensions of drug production and trafficking, and that most of the drugs in the area were synthetic, rather than opium-based, substances. The technology and precursors necessary for drug production did not exist in Myanmar: various drug precursors were trafficked into Wa Special Region 4, where substances such as "ice" and other methamphetamines were produced, then the drugs would be distributed to other parts of mainland Southeast Asia via Tachileik.

MPF officials also noted that law enforcement activities were primarily taken against drug users, and sometimes against traffickers, but

37 1993 Narcotic Drugs and Psychotropic Substances Law, s. 15: "A drug user who fails to register at the place prescribed by the Ministry of Health or at a medical centre recognised by the Government for the purpose or who fails to abide by the directives issued by the Ministry of Health for medical treatment shall be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 5 years."

rarely against producers. They explained that the substances were produced in areas where “there is no peace or security”, which were also locations in which the MPF did not have a physical presence.

Legal Protection of Women and Vulnerable Groups

On the issue of legal protection of women and vulnerable groups, some officials reported dealing with “a few” cases of human trafficking, rape and domestic violence.

In relation to human trafficking, one MPF officer in northern Shan stated:

“It is a complex issue and [it] depends on the definition in law. If there is exploitation in order to profit from a person, for example, someone marries a Chinese man, or in other cases where someone acts as a broker and sells a woman to a Chinese man. In the first case some would argue that this is trafficking, while others would see it as a normal marriage. ... The nature of trafficking here is related to marriage [of Myanmar women] to Chinese men. There are rare cases involving exploitation by people being sold [into] slavery. Very few cases.”

When asked about the relationship between migration and human trafficking, another MPF officer in eastern Shan explained:

“People from Yangon, Mandalay and other parts of the country have friends who live and work in Thailand, and who are familiar with Thailand. The friend persuades him or her to come along to work in Thailand. The friend does not sell the person, he serves as a broker, a vehicle or an intermediary. The friend says, “When you reach Thailand, you will get three lakh.” ... and the friend will get some amount of commission. If everything is OK in Thailand, there are no complaints. If not, when the working conditions are bad,

or when the salary is less than what the friend said, then people make complaints. Without complaints, the police cannot [open a case].”

Some judges and law officers also explained that people charged with human trafficking were also charged with violations of the 1947 Immigration (Emergency Provisions) Act. The former charge (brought by the police) would be prosecuted at the district court, whereas the latter charge (brought by the Department of Immigration) would be prosecuted at the township court.

With respect to domestic violence, few township judges reported dealing with civil divorce cases where violence in the home was cited as the reason for separation. When questioned specifically about the issuance of protective orders by the court for the woman’s safety, one judge stated that no restrictions on the defendant were included in final rulings.

Some judges also reported hearing criminal cases alleging various forms of physical assault suffered by women, but “most of them got to an agreement [between husband and wife] after filing charges.” At one busy township court in a large town where a few such cases were filed in the past year, all cases were in the process of being withdrawn from court (Chapter 5).

In the course of the study, only one case of rape came to light, in northern Shan. The perpetrator was a Tatmadaw soldier. A woman who was home alone was sexually assaulted during a military operation, and the Kachin CLA filed a case at the police station on her behalf. Some officials explained that the soldier was initially tried at court martial and sentenced to three years pursuant to military regulations, then, upon approval of the battalion commander, was tried in a civilian court pursuant to the 1861 Penal Code and sentenced to another 10 years.

Traffic Accidents

At the township level, court officials described dealing with a large volume of cases relating to road accidents and traffic violations. One township judge explained that such “minor” cases were usually disposed of within a day, and that they did not get to the stage of a full trial (Chapter 5)

Collective Savings

One township court in southern Shan heard cases involving criminal breach of trust relating to collective savings.³⁸ The township judge explained that the defendants in such cases generally absconded with sums of money and were rarely caught. For those who did not abscond, some would attempt negotiations alongside court proceedings and, if the parties reached an agreement, the case would be withdrawn from court.

1945 Police Act

In one township court in southern Shan, judges explained that they dealt with cases involving sections 47 and 34 of the 1945 Police Act. Such cases were preventive measures taken by the police during their patrol of designated areas: “people getting drunk in the dark and [who] did some mischief after getting drunk [are] charged with [section] 47. This is like taking preventive measures not to commit serious crimes.”

The punishment for such a case was either a Ks.50 fine or eight days imprisonment. First-time offenders were usually fined and habitual offenders detained for three to eight days. A township judge explained that prosecution of offences under the Police Act involved the exercise of police discretion, whereas prosecution under the 1961 Restriction of Movement and Probation of Habitual Offenders Law required consultation with local administrators and approval by the township administrator.

Similar to traffic violations, these matters were considered summons cases (Chapter 5) and were generally disposed of within a day as “people confessed”.

Unlawful Association

In northern Shan, some cases filed under section 17(1) of the Unlawful Associations Act involved charges of criminal association with the Kachin Independence Army (KIA) and Ta’ang National Liberation Army (TNLA). One judge explained that the burden of proof was on the accused, rather than the prosecution, to prove that the organisation with which the accused was allegedly associated was lawfully recognised. Some police officers also explained that proof was established through evidence, such as uniforms and weapons, seized during arrest. Justice sector officials explained that the Tatmadaw carried out initial investigations in cases of unlawful association, and acted as the plaintiff in court. As one law officer explained:

“Either the army captain or major will report the allegation and act as the plaintiff [during trial]. ... Whether the accused persons are arrested in uniform or plain clothes, everything depends on the investigation during army custody. After the army has completed its investigation, it refers the case to the police. [The army] provides details regarding which rebel [organisation], battalion unit, [duration of service], etc. The police continue the investigation if necessary, and collect further information. If they have the necessary evidence or if the person admits to the offence, the police process the prosecution under section 17(1) of the Unlawful Associations Act.”

In summary, land and land-related property disputes were a priority concern in nearly all communities visited, as people attempted to secure land registration, the return of confiscated land or compensation for confiscated land. Legal plural-

38 1861 Penal Code, ss. 405 and 406.

ism generated some of these conflicts. Some respondents reported abuse of official authority in land-related matters.

Drugs and drug-related issues are another priority concern and have had profound social and economic impacts on families and children. The prevalence of drugs and drug addiction were cited as having caused more neighbourhood crime and general insecurity. Some 80% to 90% of cases processed through the district courts were for drug-related offences.

Domestic violence and sexual assault are key issues of concern and are sometimes explicitly linked to drug use and addiction. Cultural attitudes towards the private sphere of family life hinder women's ability to leave abusive situations and secure access to justice. Justice sector officials knew of few cases of rape and domestic violence reaching the formal justice system.

Exploitation of migrant labour and human trafficking are facilitated in the absence of formal documentation, and local communities have little ability to intervene and assist the vulnerable. Ethnic or religious minority groups in northern and southern Shan reported being subject to discrimination and having difficulties obtaining identity documentation.

Disputes over loans and debts were common. An underlying cause of cycles of indebtedness is the difficulty of accessing capital. Many disputes arose in the context of private collective savings groups and government cooperative loan groups. The formal justice system had little involvement in resolving such disputes.

Respondents reported difficulties accessing public services such as water supply, a lack of regulation, corruption in the provision of public services and having no effective avenues for redress.



အမှတ်(၄)ရပ်ကွက်အုပ်ချုပ်ရေးမှူးရုံး

လွိုင်လင်မြို့

ရပ်ကွက်ရွေးကောက်ပွဲကော်မရှင်အဖွဲ့ခွဲရုံး

အမှတ်(၄)ရပ်ကွက်၊ လွိုင်လင်မြို့နယ်

CHAPTER 5

DISPUTE SETTLEMENT TRAJECTORIES

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 chapter is concerned with the 84 disputes respondents identified as being of priority concern. It describes how settlement of those disputes was attempted, and sometimes achieved. It also considers the roles and responsibilities of third-party actors at the local and district levels who can assist in the settlement of people's disputes and concerns about justice. It closes by describing some aspects of the criminal justice system and the General Administration Department in relation to dispute settlement.

DIRECT NEGOTIATIONS AND THIRD-PARTY ASSISTANCE

In over half the matters of priority concern (48 of 84; 57.1%), respondents negotiated directly with the other party to the dispute. Less than

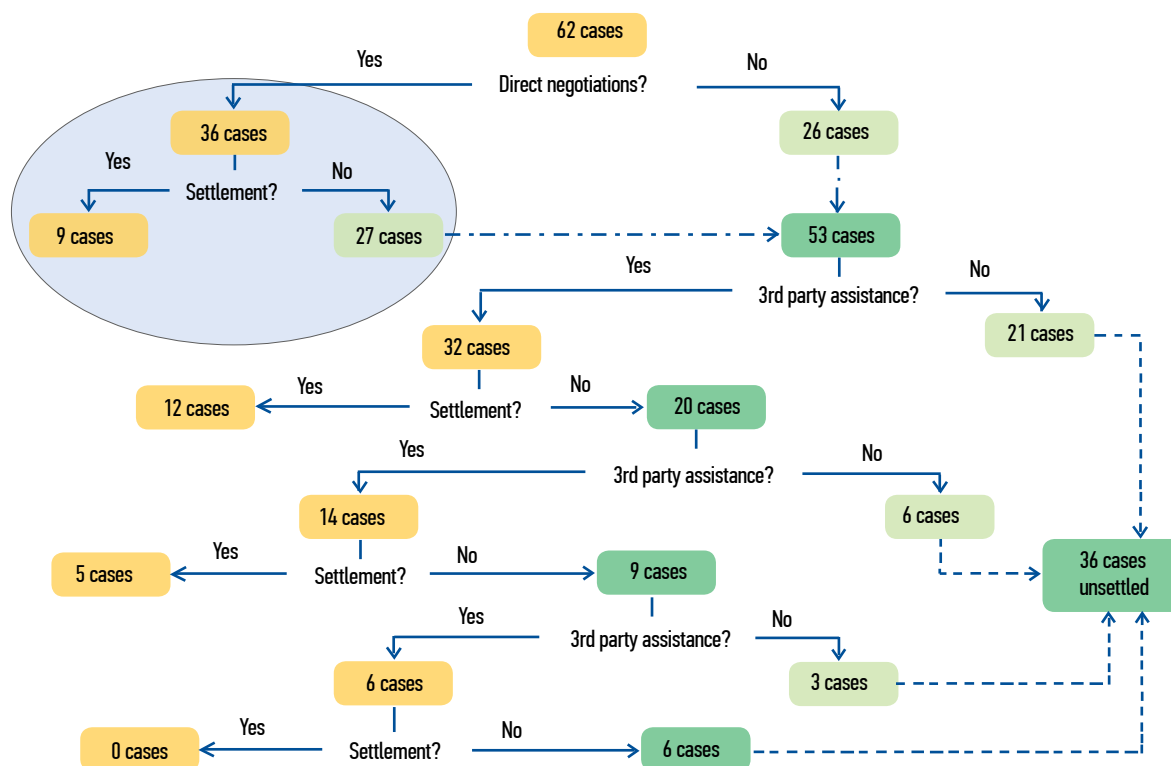
one third (15) of these matters were settled through negotiation, with or without the assistance of a third party.

The six types of dispute of greatest concern³⁹ together accounted for almost three quarters (62 of 84; 73.8%) of all priority concerns. Figure 5.1 summarizes the settlement trajectories of these 62 disputes. In a large majority of these (36 of 62), complainants attempted to settle the dispute by direct negotiations in the first instance; only nine of the disputes were settled.

Where initial negotiations were not attempted or unsuccessful (53 disputes), 32 complainants went on to seek assistance from a third party, which led to the settlement of 12 more disputes. Fourteen complainants (all with land-related disputes) then proceeded to seek assistance from other third parties, which led to five more disputes being settled.

No settlement was reached in 36 cases – 58.0% of the 62 disputes of greatest priority concern.

Figure 5.1 Attempts at Settlement of Priority Concerns



39 Land-related dispute (32 of 84), debt owed by others (10), problems obtaining birth and identity documentation (7), suspected homicide (5), water-related dispute (4) and fight (4).

In three of the five suspected homicide cases, respondents attempted direct negotiations with the opposite party. One of these was settled with a compensation payment of about one lakh and another was settled with the help of neighbours and what was characterised as a “fine payment”. Three of the five cases that resulted in loss of life were left unresolved.

Third-party actors involved in attempting to resolve 32 of these priority disputes included: local administrators; the GAD, Land Records Department, court and FMC at the township level; the state Land Records Department; political party representatives and members of the people’s militia.

Of the 26 cases that were settled, either by direct negotiations or with the assistance of a third party or parties, the respondents involved expressed satisfaction with having achieved a favourable or acceptable outcome (e.g., “The decision is fair and I am satisfied”; “I beat him and it was my fault. But the problem was settled by compensation and I am satisfied”; “We have nothing but to be satisfied. We have to negotiate for the interests of the two parties”; “I did not need to wait again after seeking help and I obtained the identity documentation, so I am satisfied”; and “I am satisfied that I got back one acre of land, which is better than nothing.”). Some expressed satisfaction with a third party’s dispute settlement role (e.g., “A local leader helped solve the problem”; “We were compensated with about one lakh thanks to the neighbours’ help”; and “The other party used my land without me knowing. The Dagi solved the dispute and I got my land back, so I am satisfied”), and others expressed satisfaction with the opposing party’s acknowledgement of wrongdoing (e.g., “The other party apologised and promised not to repeat the action, so I am satisfied.”).

Not all settlements resulted in a favourable and/or satisfactory outcome. Some respondents

identified unfavourable outcomes (e.g., “There were 15 acres of land that I had utilised since my grandparents’ time, but I now only have two acres”; “Honestly, I am not satisfied as I had to give half of my land to the other party who claimed it as his land. I accepted [the decision] as I did not want the problem to get bigger”; “There are differences in what the outcome means and what happens in reality among family members. This is what I am not satisfied with”; and “I would be satisfied if they allowed my brother to live there until his death. Now he does not get anything despite it being his home. I strongly resent the court and the judges.”). Other sex pressed frustration at the lack of enforcement of decisions (e.g., “The court ordered that I be entitled to two acres of land but the other party only gave one acre, and I am not satisfied”; and “Only one and a half acres of land was returned to me instead of the two acres that should be returned according to the decision”). There was also dissatisfaction where obligations owed remained undischarged (e.g., “The debtors ran away and I have lost my capital [...] so I am not satisfied”) and dissatisfaction with the costs associated with settling a dispute (e.g., “I am not satisfied as the cost of going to court cost me more [money] than it was worth.”).

In more than half (21) of the 53 priority cases not negotiated to a conclusion, the complainant did not seek help from anyone or did not take any action. These respondents gave various reasons, including:

- Seeking help or taking action would damage the relationship with the other party, or bring shame upon the other party (11 instances);
- Seeking help or taking action would cost too much (5 instances);
- The problem was not sufficiently important (5 instances);
- Seeking help or taking action would only be a waste of time (5 instances);

48 It is interesting to note that, among the top six priority concerns, only problems relating to birth and identity documentation were not referred to any third parties for help.

- Seeking help or taking action would entail an opportunity cost of lost earnings (2 instances);
- Respondents did not know what to do, or who could be of help (2 instances);
- The respondent had no hope that anyone could be of any help (1 instance);
- The other party has more money (1 instance);
- There was no formal contract or agreement (1 instance).

Respondents also considered six hypothetical disputes (involving theft of fruit from the garden, debt, domestic violence, traffic accident, human trafficking and a boundary-related dispute) and indicated how they would resolve them. Their responses to the first four scenarios (Figures 5.2(a) to 5.2(d), Annex II) were generally consistent with their general inclination towards self-reliance (i.e. direct negotiation) in the first instance to settle actual disputes.

In the hypothetical situation involving human trafficking, 45% of respondents said they would first seek assistance from the township police or the district/anti-trafficking police. In the event that they were unsuccessful in getting assistance, almost 63% of respondents indicated that they did not know from whom to seek help, or had no one else to turn to (Figure 5.2(e), Annex II). In the hypothetical boundary-related dispute, the highest proportion of respondents (22.5%) indicated that they would first attempt to settle the problem by themselves. Others would call on the Dagi, local administrators or the township Land Records Department in the first instance. In the event that they were unsuccessful, almost one in three indicated that they had no one else to turn to (Figure 5.2(f), Annex II).

In summary, respondents overwhelmingly opted not to use the formal justice system but to attempt to resolve their disputes locally – large-

ly without success. In over half the cases, complainants first tried to settle the dispute by direct negotiations. After direct negotiations and/or the assistance of third parties, 58% of the 62 disputes of greatest priority concern remained unresolved. Not all settlements resulted in favourable and/or satisfactory final outcomes.

Some complainants did not seek help from anyone or did not take any action following unsuccessful negotiations, half of them because they believed that seeking help or taking action would damage the relationship with the other party, or bring shame upon the other party.

Third Parties Involved in Dispute Resolution

A range of third parties played roles in dispute settlement, which perhaps reflects the diversity of Shan State. Table 5.1 describes the various third parties encountered during the study, and the potential roles each might play in dispute settlement. Local community leaders who exercise authority over a geographic location – including Dagi and *nhe myae hmu* (areas-in-charge) – emerged as the most prominent in helping to settle respondents’ day-to-day problems.

Respondents, particularly those from urban research sites, also reported approaching the police in their official capacity in certain instances, such as in response to traffic accidents⁴⁰, vehicle theft and burglary, and for assistance with drug-related problems. The police sometimes acted in less formal and official ways. In one study site, the police often detained and held in custody men who got drunk and became violent at home; this was reportedly carried out at the request of the men’s families. In another community, the township police informally acted as enforcers to coerce members of collective savings groups to continue contributing after some members had absconded with the money.

40 This is consistent with responses by a minority of respondents who indicated that they would approach the police as a first point of assistance in a hypothetical dispute involving a traffic accident.

Table 5.1 Third-Party Actors: Potential Roles in Dispute Settlement

| SPHERE OF INFLUENCE | ACTOR | GENERAL CHARACTERISTICS | POTENTIAL ROLES |
|---------------------|--|---|---|
| Geographic Area | LOCAL ADMINISTRATOR (Ward/village tract Administrator (W/VTA)) | <ul style="list-style-type: none"> • Lowest tier of official government administrative structure • Indirectly elected by their constituency⁴¹, and assume responsibilities⁴² pursuant to the 2012 Ward and Village Tract Administration Law • As chair of a ward/village tract FMC, has a dispute settlement role in relation to farmland • All (14) are male • All are fluent in Myanmar • Generally more educated, and of higher economic status than others within their community | <ul style="list-style-type: none"> • Dispute settlement • Mediation/negotiation |
| | DAGYI | <ul style="list-style-type: none"> • Local leader who exercises authority over the area • Majority (20) selected by members of the community or elders, two appointed by local administrator, one holds an inherited position • All (23) are male • A minority are fluent in Myanmar; the majority are not • Varied in education levels and economic status | <ul style="list-style-type: none"> • Dispute settlement • Mediation/negotiation |
| | AREA-IN-CHARGE | <ul style="list-style-type: none"> • Local leader who exercises authority over a geographic section of a ward or village • Most appointed by local administrators, a few chosen by communities • Majority are male; two females | <ul style="list-style-type: none"> • Facilitation • Dispute settlement |
| | 10 HHH | <ul style="list-style-type: none"> • Involved in indirect elections of local administrators | <ul style="list-style-type: none"> • Election of local administrator • Facilitation • Dispute settlement (potential) |

41 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.

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

| | | | |
|----------------------------------|--|---|---|
| Tradition and Culture | "ELDERLY AND RESPECTED PERSON" | <ul style="list-style-type: none"> • Generally, though not always, distinct from the elders appointed by the township administrator to oversee the election of local administrators • Engaged in dispute settlement either alone or together with Dagyi • All (17) are male of advanced age • Generally tended to have one or more of the following characteristics: higher wealth, education or personal connections | <ul style="list-style-type: none"> • Dispute settlement • Nomination/ • appointment of Dagyi |
| | CULTURE AND LITERATURE ASSOCIATION (CLA) | <ul style="list-style-type: none"> • Ethnicity-based organisation • Although main activities revolve around preservation and promotion of cultural heritage, including language and dance, can also have a dispute settlement function | <ul style="list-style-type: none"> • Dispute settlement |
| Religion | ISLAMIC COUNCIL OF SOUTHERN SHAN STATE | <ul style="list-style-type: none"> • 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 • All are male and generally learned in Islamic law | <ul style="list-style-type: none"> • Dispute settlement |
| | SAYARDAW | <ul style="list-style-type: none"> • Head monk in the local area • Given the nature and significance of the individual's influence, may sometimes affect the community's perception of a dispute | |
| | CHURCH COMMITTEE (Akha and Lahu) | <ul style="list-style-type: none"> • 12–15 members • Settle marital disputes and cases of adultery • More male than female members | <ul style="list-style-type: none"> • Dispute settlement |
| Political Parties and MPs | MEMBER OF PARLIAMENT (MP) | <ul style="list-style-type: none"> • Shan State and Union Parliaments • Approached or contacted when MP is native to the ward/village, and through personal connections | <ul style="list-style-type: none"> • Facilitation |
| | POLITICAL PARTY | <ul style="list-style-type: none"> • NLD and National Unity Party (NUP) township branches | <ul style="list-style-type: none"> • Facilitation • Investigation |
| Women and Youth | YOUTH GROUP | <ul style="list-style-type: none"> • Male and female groups | <ul style="list-style-type: none"> • Dispute settlement • Facilitation |
| | MYANMAR WOMEN'S AFFAIRS FEDERATION (MWAFF) | <ul style="list-style-type: none"> • Non-governmental organisation with the mission of empowering and promoting the advancement of women⁴³ | <ul style="list-style-type: none"> • Facilitation • Dispute settlement |
| Security | PEOPLE'S MILITIA | <ul style="list-style-type: none"> • Units are organised by, and come under the direct control of, the Tatmadaw for the purposes of "maintaining security" • Each unit operates within its village/village tract or town area • Unit members are recruited from within the local area (i.e., village/village tract or town area) | <ul style="list-style-type: none"> • Facilitation |

43 See: <http://www.mwaf.org.mm/en/about-us>

Ward/Village Tract Administrators

In southern and northern Shan, some W/VTAs were actively involved in settling private disputes involving competing claims over land boundaries, inheritance, loans and debts (though a few specifically declined to deal with such problems), landlords and tenants, traffic accidents and domestic violence, in addition to serving as witnesses in real estate transactions.

One way in which W/VTAs attempted to enforce their decisions was by making an offender sign a *khan wun* (a type of contract promising not to repeat an act) and threatening further action if the offender broke the pledge. In some cases, taking further action meant handing the offender over to the police or other formal authorities, while in other instances, action could mean eviction from the community (Box 29). When problems were beyond their purview, such as cases involving powerful external actors or higher authorities, the W/VTAs served as a bridge for their communities and relayed the complaints to the township administrator or other government authority. In a few communities, the W/VTAs also reported that they accompanied police officers arresting drug dealers.

Other W/VTAs in southern and northern Shan served in a much more limited capacity, with residents approaching them only for more procedural matters. In study sites in eastern Shan, W/VTAs had almost no influence within their communities.

Box 29

A couple from Irrawaddy Region moved to northern Shan and rented a house in a ward.

Soon, however, the couple began to have fights and argued loudly every evening, causing nuisance to their neighbours. At times, a drunken friend would also stay with them, adding to the noise and chaos.

The neighbours complained to the owner of the house, who asked the tenants to move out. The couple refused. The house owner approached the area-in-charge for assistance, who in turn referred him to the ward administrator.

The ward administrator called the couple to his office and told them to stop fighting. He warned them that they would have to leave the area if they continued causing disturbance to their neighbours. The couple signed a *khan wun* pledging not to cause nuisance, but they soon repeated their actions. The ward administrator called them again to his office and asked them to leave the area because they had broken their promise. The couple admitted that they had broken the pledge and moved away.

Dagyis (သုတိး) ⁴⁴

In general, the *Dagyis* – the most important people in the local area – exercised more authority over their communities and were more involved in settling day-to-day problems than were W/VTAs. This was likely due to the vast expanse of Shan State where a single village tract or ward might cover a large portion of land. *Dagyis'* influence was apparent in both urban and rural areas in eastern Shan, and in rural communities in southern and northern Shan.

In the course of this study, *Dagyis* of various ethnicities, including Akha, Lahu, Shan, Taung Yoe, Pa-O, Kokang, Bamar, Chinese, Ghurkha and Muslim, were encountered, but no *Kachin Dagi* was identified. In areas where people of different ethnicities lived together, some *Dagyis'* influence was limited to people of the same ethnic group as themselves, whereas others were also influential over members of other ethnic groups.

44 Literally, "big person" in Myanmar.

Dagyis settled private disputes such as fights among neighbours, domestic violence, animal trespass, adultery and competing claims over land boundaries (Boxes 30 and 31). Most of the Dagyis also worked closely with respected community elders to settle disputes, accepting their suggestions and working with them to resolve disputes jointly. In particular, community elders were involved in the settlement of land boundary disputes because they knew the history of the area.

Box 30

In a community where villagers traditionally built fences around their fields to prevent cattle from entering and damaging the crops, one farmer discovered that this neighbour had fenced and encircled a part of this land.

The farmer notified the neighbour twice, but the latter did not respond. The farmer then complained to the Dagyi, who warned the neighbour to remove the fence. The fence was removed and the issue resolved.

Areas-in-Charge

Areas-in-charge were encountered in study sites where Dagyis were not present (i.e., in urban areas in southern and northern Shan and one rural site in southern Shan). These people were commonly referred to as *nhe myae hmu*, or occasionally as *ouk su hmu*.

Areas-in-charge generally played a facilitation role between the local administrators and residents in their local areas, including gathering people for the issuance of identity documentation and serving as witnesses at the local administrator's office. Areas-in-charge played a more active dispute settlement role where they represented members of their own ethnic group, and dealt with cases of fights, thefts, domestic violence, divorce, inheritance disputes, acqui-

sition of civil documentation and land-related problems. One local administrator commented that it was good that such *nhe myae hmu* could solve problems within their own ethnic group.

Among the 18 areas-in-charge who were interviewed, two were women (one Hindu, the other Muslim). They had previously been members of the MAAF and were urged by their communities to take on the position of area-in-charge.

"Elderly and Respected Persons"

In one study site in eastern Shan, there was a specific category of elderly and respected persons called *kwin htawk ah hpwe* (ကွင်းထောက်အဖွဲ့).⁴⁵ This was a committee of three to five men who worked together with the Dagyi and settled disputes jointly with him. In addition to having the general characteristics described in Table 5.1, they were expected to adhere to Buddhist religious precepts in daily life.

Culture and Literature Associations

The research team met with the Shan, Kokang and Pa-O CLAs in Taunggyi, the Lahu CLA in Kengtung, the Akha CLA in Tachileik and the Shan, Kokang, Ta'ang/Palaung and Kachin CLAs in Lashio. With the exception of the Kachin CLA, none of the CLAs had a dispute settlement sub-committee as part of its organisational structure.

The CLA representatives explained that disputes were mostly settled at the village level, involving the Dagyi and sometimes also the village elders. Where cases were reported to the CLAs, they were usually dealt with by the social affairs sub-committee as these matters pertained to custom and tradition. This sub-committee of the Shan CLA was informally known as the "committee for happy and sad events". Representatives of the Kokang CLAs said that they played an important role in helping Kokang people apply for Citizenship Scrutiny Cards.

45 Which may be translated as "area supporting committee".



Translation of requirements for application for Citizenship Scrutiny Cards and updating of household lists, displayed at the Kokang Culture and Literature Association

Some CLA representatives explained some of the dispute settlement processes applied by Dagyis at the village level (Box 31). They also noted that the specificities of any decision would vary from place to place, as the rules were different from village to village. For example, Lahu CLA representatives explained that following the annual Lahu New Year celebrations that take place over 12 days between February and March, a village meeting would be held on a designated day. Every household would be invited to participate in the meeting, during which the community would decide on the village rules and regulations, including any amendments, and a new Dagyi might be elected (by one representative from each household).

Box 31

In an Akha village, settlement of a dispute would take place at the residence of the jaw ba (Dagyi in Akha language), to which the parties to the dispute, as well as the village leaders* would be invited. The village leaders would hear the parties' perspectives and would try to come to an acceptable solution for all involved. Once an agreement had been reached between the parties, alcohol would be served to everyone.

A "wrongdoer" found guilty by the village leaders would have to admit to the wrongdoing, cover the "fees" of the dispute settlement process (typically hot

tea and sunflower seeds), and accept punishment. Offences were calculated in terms of units, with corresponding fines/compensation or punishment. Verbal assault, for example, was equivalent to five units, and attracted a Ks.150,000 fine. For a “bigger case” such as adultery, which was equivalent to 620 units, the “wrongdoer” would be required to serve a whole pig to the entire community as punishment. A “wrongdoer” was entitled to negotiate, bargain or plead for leniency from the punishment. The Akha traditionally did not impose imprisonment as they believed that a person would lose his/her soul when confined in such a manner.

In a Pa-O village, when the Phra Dhong (Dagyi in Pa-O language) was unable to settle a matter by himself, a village meeting would be convened to hear and settle the dispute. The Phra Dhong would present the case to the Tamadee Loh Dan** (traditional board or jury in Pa-O language), who would also preside over the meeting. Parties to the dispute would be allowed to present their case, and the Tamadee Loh Dan would consult with other members of the village before making a decision. If the decision was not accepted, parties would have the option of resorting to the formal justice system.

In a Ta’ang/Palaung village, problems would usually be settled between the parties (involving family members). If this failed, they would reach the Taa Gouq (Dagyi in Ta’ang/Palaung language). If the Taa Gouq was unsuccessful, the matter could be referred to a committee convened at the Taik neh (grouping of two to three villages, in Ta’ang/Palaung language) sub-township level. The committee would in general consist of the Taik neh-in-charge, a secretary, a deputy secretary, the Taa Gouq and community elders (taa ru taa gaang in Ta’ang/Palaung language).

The committee would ask questions of the parties and listen to what they had to say. Family members, as well as those with knowledge of the matter at hand, would also be entitled to speak. After listening to all the relevant parties, the committee would sit and deliberate in private. Throughout this process, the complainant would be responsible for serving the refreshments (typically tea and tea leaves).

Once the committee reached a conclusion, the parties would be asked in turn if they agreed with the decision. If there was agreement, the problem would be considered solved and the committee would give words of blessing to the parties. A written record of the decision, with the signatures of the parties, would be made. If there was no agreement, no further action could be taken by the committee, though the parties would beat liberty to present the matter to the CLA at the township, where the same process would apply.

* Including the Jaw Ba, the Na Bee (deputy Jaw Ba) and the Nang Er (person who organises or mobilises the villagers)

** Elders with a reputation for honesty, dignity and integrity, who are trusted and recognised by the community for their wisdom

Islamic Council of Southern Shan State

The Islamic Council has three sub-committees, one of which is dedicated to dispute settlement between those who profess to adhere to the Islamic faith. Representatives of the Islamic Council explained that, between 2012 and 2014, the Dispute Settlement Sub-Committee cooperated with monks and state authorities to prevent the outbreak of inter-communal violence. Following that period, the disputes that were dealt with by the Sub-Committee included only those that involved marital affairs and inheritance.

Representatives of the Islamic Council explained that the disputes that come before the Dispute Settlement Sub-Committee were settled in accordance with the Qu’ran.

Youth Groups

In two study sites, male and female youth groups played a dispute settlement role with re-

spect to cases involving fights between youths, fights between couples, elopement, drug use, theft and rape.

In one site, the youth group played a facilitation role in relation to drug use and theft. Such cases were first reported to the youth leader who then informed the Danyi. The youth group also required couples who wanted to elope to inform it, to prevent cases of human trafficking.

Myanmar Women's Affairs Federation

In some study sites, the MWAF played a role in assisting women who suffered from gender-based violence. In these communities, MWAF members acted as advocates for the women, by either intervening informally and putting pressure on the men to stop hitting their wives or reporting the case to another authority.

In reality, however, MWAF members had limited authority and ability to concretely assist women. In one case, for example, the MWAF member who was trying to help a rape victim negotiate compensation was specifically told by community elders to stay away as the MWAF was not informed about Ta'ang/Palaung traditions. The chairperson of a ward MWAF also noted that the MWAF's influence has decreased since Myanmar's transition to a civilian government:

"Under the military government, the wife of the Commander of Shan State was the Chairperson of the Shan State MWAF. I could contact her for help at any time, and she would go to the places where there were problems. In this way, most of the problems were successfully solved. Now, all I can do is send a letter to the township and state MWAF. But there isn't any action or response, so I can't effectively help women when there are complaints."

People's Militia

In two study sites, the people's militia had a quasi-law-enforcement role. In these areas, the militia was involved in cases of theft and fights and in the arrests of drug and rape offenders. They sometimes accompanied the police and played a role in describing the incident or problem to the da gyi or local administrator.

Other Individual Third Parties

In addition to the (institutional) parties described above, other people were identified by their communities as being influential, and whom people could rely on or seek help from. These included:

- An Akha women's church group leader, who was also the wife of a priest and was literate in Myanmar language, who mediated cases of corporal punishment in school;
- The Chairperson of a ward Development Supporting Committee, who was a former Tatmadaw colonel with good relations with the USDP and the Tatmadaw;
- The Chairperson of a Ta'ang/Palaung CLA, who was also an x-ray technician at the local hospital, was fluent in Myanmar language and was involved in settling disputes such as traffic accidents, drug-related cases, fights, domestic violence, divorce, inheritance and land-related cases;
- A Christian female Ta'ang/Palaung 10HHH and member of the MWAF, fluent in Myanmar language, who was also the daughter of a former leader of the TNLA, and who mediated disputes between couples and neighbours;
- A Kachin local administrator who was a university graduate, and whose father

was an influential CLA leader and Thin Htauk⁴⁶;

- A wealthy Kachin local administrator and patron of a Kachin CLA, literate in Myanmar language, and whose father was a former township judge;
- A local administrator who was a university graduate, whose business employed many people from the community, who led various social affairs (e.g. funerals, blood donations, etc.), and who was experienced in dealing with the government, including the Tatmadaw;
- A Pa-O MP who continued to return to his native township (visiting family and friends, etc.), did not require people to make appointments to meet him, and who responded when requested to help.

This suggests that a person-centred social and political structure retains at least some relevance in the study sites across Shan State. Some of the main characteristics common to these people, and which position them as having the ability to help, 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, the range of third-party actors who assist with dispute settlement may reflect the diversity of Shan State. Local community leaders who exercise authority over a geographic location – including Dagyis and Nhe Myae Hmu (areas-in-charge) – were the most prominent in resolving day-to-day problems. Other individuals, both male and female, are influential in their communities and sought after to assist with dispute resolution.

MWAF has limited authority and ability to concretely assist women; its influence appears to have decreased since Myanmar's transition to a civilian government. People's militias sometimes have a quasi-law-enforcement role and assist the police.

CRIMINAL JUSTICE SYSTEM

Key institutions and processes in the Myanmar criminal justice system are described in Annex III.

Police

One police officer in Shan described police involvement in dispute settlement as follows:

“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]. ... we have to go to the crime scene according to the information received. In order to file a case, the person who was hurt or his [or her] representative must make a complaint with an FIR. If they do not file an FIR, we cannot file a case. ... Taking action depends on the FIR. Even if [a party] does not come to the station to file an FIR, we have to go to the crime scene. ... 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.”

46 A Thin Htauk is a person approved by church members to serve a role in religious activities. Although a Thin Htauk is a lay person and does not receive a salary from the church, he must adhere to certain behavioural standards, such as abstaining from alcohol and always speaking the truth.

Legal Representation

Judges and law officers concurred that significant proportions of defendants were unrepresented during legal proceedings at court.

At a relatively busy district court, one judge estimated that only 10% to 20% of defendants in cases that did not incur the death penalty had legal representation. At another, busier district court, where a significant proportion of the caseload involved drug-related offences, judges estimated that about two thirds of the defendants in such cases were unrepresented. Judges at both courts explained that defendants mostly admitted to the charges, that they very rarely cross-examined witnesses testifying against them and that they mostly wanted legal proceedings against them to be completed as quickly as possible. Therefore, only a few cases proceeded to a full trial.

The situation was similar for proceedings conducted at township courts. In one township, where two thirds of the caseload involved drug-related offences, the township judge stated that only one defendant had a lawyer, and was also the only one not to submit a guilty plea. In another township, the township law officer estimated that about 50% of the defendants in drug-related cases had legal representation.

Another township law officer explained that, since 70% of the cases at the township court were summary trials, no defence lawyers were present. For the remaining cases, more than 10 defendants had lawyers.

Another judge at a township court noted that most juvenile defendants were unrepresented. He elaborated, "Even though we give them a chance to hire a lawyer, maybe they don't know how, or their parents tell them that they are not going to get a harsh punishment, so they do not [have lawyers]."

Some judges and law officers suggested applying the following criteria to prioritise the provision of legal aid to certain categories of defendant:

- Where the defendant is a child;
- Where the defendant is a first-time offender;
- Where the defendant is charged with a cognizable offence;
- Where the defendant is charged with an offence that incurs a prison sentence of more than 10 years;
- The socio-economic status of the defendant.

GENERAL ADMINISTRATION DEPARTMENT

Land-related Disputes

Interviews with GAD officials cast some light on the ways in which administrators dealt with land-related disputes. Some administrators identified such disputes as requiring the most time to address.

Land-related complaints were addressed to township administrators either directly or indirectly through local administrators. A district administrator said that, "[some] cases are forwarded [from the] township after they were reviewed, [and some cases] come from the state level [or] the Union level. No cases [were] sent directly to [the district GAD] because it does not handle any ground issues."

One township administrator described dealing with two main types of land disputes: (i) private disputes over possession, and (ii) land seizures. Private disputes were dealt with according to

whether the land in question was farmland or municipal/town land. Private disputes over possession of farmland were settled in line with the 2012 Farmland Law, the process beginning at the village tract level and with possible appeals up to township, district and/or state levels, where a decision is definitive. In the case of disputes over municipal/town land, the township administrator would verify claims on both sides and, after the vetting process, submit the case to the district administrator, who is empowered to make a decision. The verification process would involve looking at various documents with respect to use rights, tax receipts, registration, etc. Should no documentation be available, interviews would be carried out with the neighbours of the disputing parties.

In relation to land seized by the Tatmadaw or businesses, the township administrator explained that such disputes were dealt with by the Land Utilisation Management Committee.⁴⁷ Verification processes would be carried out at township and/or district levels, with decisions made by the committee at the state level. In certain instances, the Union Land Use Management Committee would hand down a decision.

Another township administrator described bringing all the disputing parties together in his capacity as chair of the FMC (pursuant to the 2012 Farmland Law) to settle a disagreement:

“The Farmland Management Committee always brings in all parties. We do not give orders, but make suggestions and negotiate/mediate. We promise to proceed with issuing official documents according to the law if they settle [the dispute] peacefully.”

Some other district administrators expressed a certain level of frustration at having to deal with some complainants who either kept appealing

decisions that had been made, or renewed their complaints upon appointment of new administrators, noting that this was a waste of time and resources. These district administrators noted that a referral system for cases to be dealt with by the courts would be helpful:

“The FMC currently does not have a referral system to the courts. If the law could be revised and would allow for appeals to court when people are dissatisfied with the decision of the FMC, then it would make our jobs easier. It is something that we would want to see [happen].”

One-Stop-Shops

Some administrators offered their perspectives on the GAD’s One-Stop-Shops. One township administrator explained that the One-Stop-Shops is known as the “public service office” and is a service they were “happy” to provide.

Another volunteered some candid thoughts on challenges in relation to the day-to-day operations of the shops, ranging from budgetary concerns to staffing issues, and from the efficacy of the service to the public’s familiarity with it:

“Sometimes, the upper level gives advice to implement a plan. But some plans are not relevant to the ground level. One example is the [One-Stop-Shops]. Every [government] department sends one officer to the [One-Stop-Shops], and this officer is supervised by a district-level departmental staff. When people come with a problem, the officer has to go back and check with the district-level staff (i.e., the officer cannot make decisions and people have to make second visits to obtain a resolution to the problems). The One-Stop-Shops budget and its office running expenses come from the GAD (i.e., without contribution from the other government departments), and I have concerns for

⁴⁷ Established in accordance with Notification No. 59/2013 (dated 16 September 2013) of the Union Government Office with the aim of dealing with confiscated farmlands and other lands.

its long-term operations. ... It is difficult for the district-level senior GAD clerk (who is responsible for supervision of the One-Stop-Shops) to control or supervise the other departmental staff. For example, when the departmental staff do not return after lunch, the clerk cannot tell them to come back because the clerk is not their superior. People are not familiar with the system. It takes time to be familiar with the One-Stop-Shops, for both users and service providers."

In summary, significant numbers of defendants were unrepresented in court. Judges and law officers suggested criteria that could be applied to increase the provision of legal aid to certain categories of defendant.

A significant amount of administrators' time is consumed by land-related disputes. Typically, such disputes are either private or concerned with the recovery of or compensation for land previously seized. Farmland Management Committees sometimes assist with dispute resolution, and some administrators advocate an appeal pathway from the FMC to the courts.



ပြည်မတောင်တန်း
ပူးပေါင်း ရေစာချုပ်ကျောက်တိုင်
၁၉၄၇ ခုမေ ၆ ရက် (၁၂) ရက်

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



CHAPTER 6

ATTITUDES TOWARDS THE JUSTICE SYSTEM AND JUDICIAL ACTORS

Photo: Orange plantation in Pan Woo Village, Loilem Township, Shan State

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 respondents in Shan State opted not to use the formal justice system but to attempt to resolve their disputes locally – largely without success. With this in mind, this chapter revisits the matter of shared values and touches on that of public accountability by officials.

The chapter first describes respondents’ attitudes towards the formal justice system, and perceptions of those who have a role in the provision of justice services – judges, law officers, the police and community leaders. It proposes an indicator of public trust in these key judicial

actors and considers how respondents would respond if judicial officers behaved in a discriminatory manner. It concludes by reporting on respondents’ expectations and perceptions of accountability by public officials.

ATTITUDES TOWARDS THE JUSTICE SYSTEM

To gauge respondents’ attitudes towards the justice system generally, the study sought their perspectives on three indicative matters, which related to bribery or corruption, access to the formal court system and the function of the law in a specific context (Table 6.1).

Table 6.1 Attitudes Towards the Justice System

| Subject | Statements | Agree* |
|-------------------------|---|--------|
| BRIBERY | (a) Public officials are not paid enough, so it is acceptable for them to ask for additional payments. | 21.3% |
| | (b) Public officials are meant to serve the public, and it is not acceptable for them to ask for additional payments. | 71.7% |
| ACCESS TO FORMAL COURTS | (a) Having knowledge will increase people’s access to the (government) courts. | 50.0% |
| | (b) Having personal connections with officials will increase people’s access to (government) courts. | 33.5% |
| FUNCTION OF THE LAW | (a) The law protects the interests of the rich and powerful. | 28.8% |
| | (b) The law prevents abuses by the rich and powerful. | 53.3% |

* The totals of 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.

A large majority of respondents (71.7%) expressed alignment with the view that public officials are meant to serve the public, and that it is not acceptable for public officials to ask for additional payments. One in five (21.3%) thought it acceptable, because public officials are not sufficiently remunerated.

Half the respondents thought that having knowledge will increase people’s access to the formal courts. One in three (33.5%) agreed that having personal connections with officials, rather than having knowledge, will increase people’s access to the formal courts. Ten per cent did not know how to respond.

More than half the respondents (53.3%) agreed that the law prevents abuses by the rich and powerful, while 28.8% agreed that the law protects the interests of the rich and powerful. Another 3.3% agreed with both statements. Both statements could be interpreted as demonstrating the belief that legislation, properly administered, can or should protect the rights of ordinary people. If so, a potential 85.4% of respondents could be said to hold such a view. Interestingly, 11.5% did not know how to respond to these statements or refused to answer.

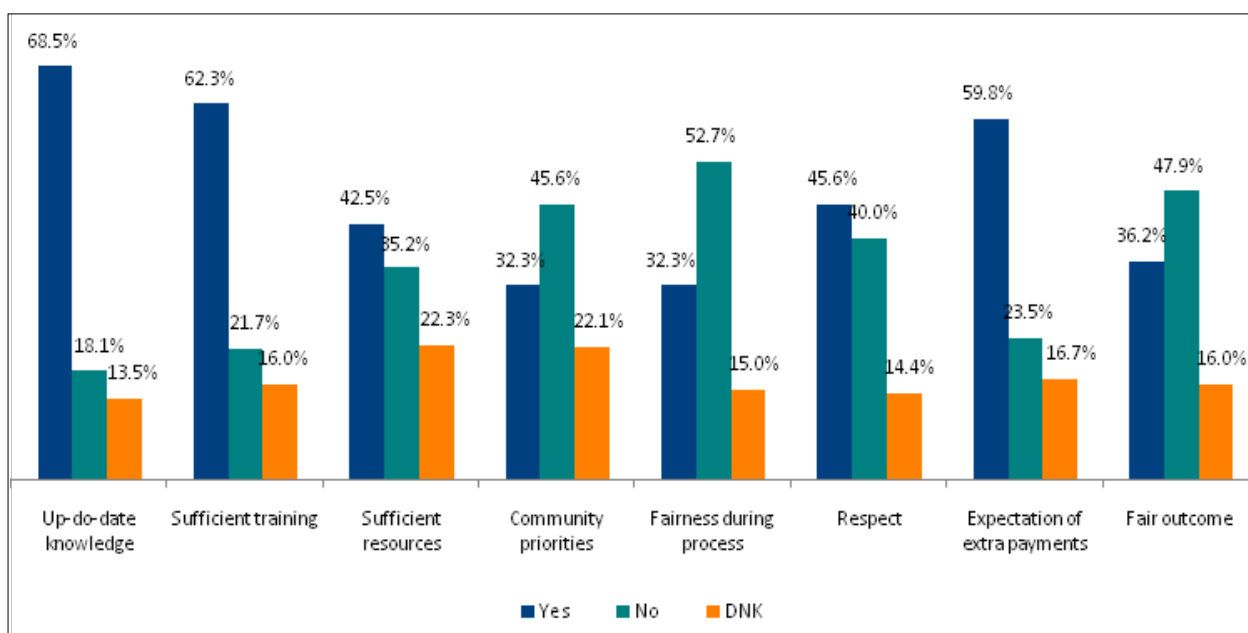
PERCEPTIONS OF JUDICIAL ACTORS

The study also explored respondents’ perceptions of formal justice sector actors – specifically, judges, law officers, and the police – as well as community leaders.⁴⁸ In this context, competence was defined to include up-to-date knowledge, sufficient training and adequate resources, and whether the actor possessed 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 no expectation of additional payments for services (see Chapter 1).

Judges

Overall, respondents expressed confidence in the competence of judges, but were less assured that judges’ values aligned with shared values such as fairness, respect and a lack of corruption (Figure 6.1). It should be noted that respondents’ perceptions of judges might be explained in part by their relative lack of exposure to the formal justice system (Chapter 3).

Figure 6.1 Perceptions of Judges



48 Note that Ward and Village Tract Administrators have formal dispute settlement roles, as provided in the 2012 Ward or Village Tract Administration Law.

A majority of respondents perceived judges to be competent: over two thirds (68.5%) thought that judges have up-to-date knowledge and almost two thirds (62.3%) believed them to be sufficiently trained. However, less than half (42.5%) perceived judges to have sufficient resources to carry out their responsibilities.

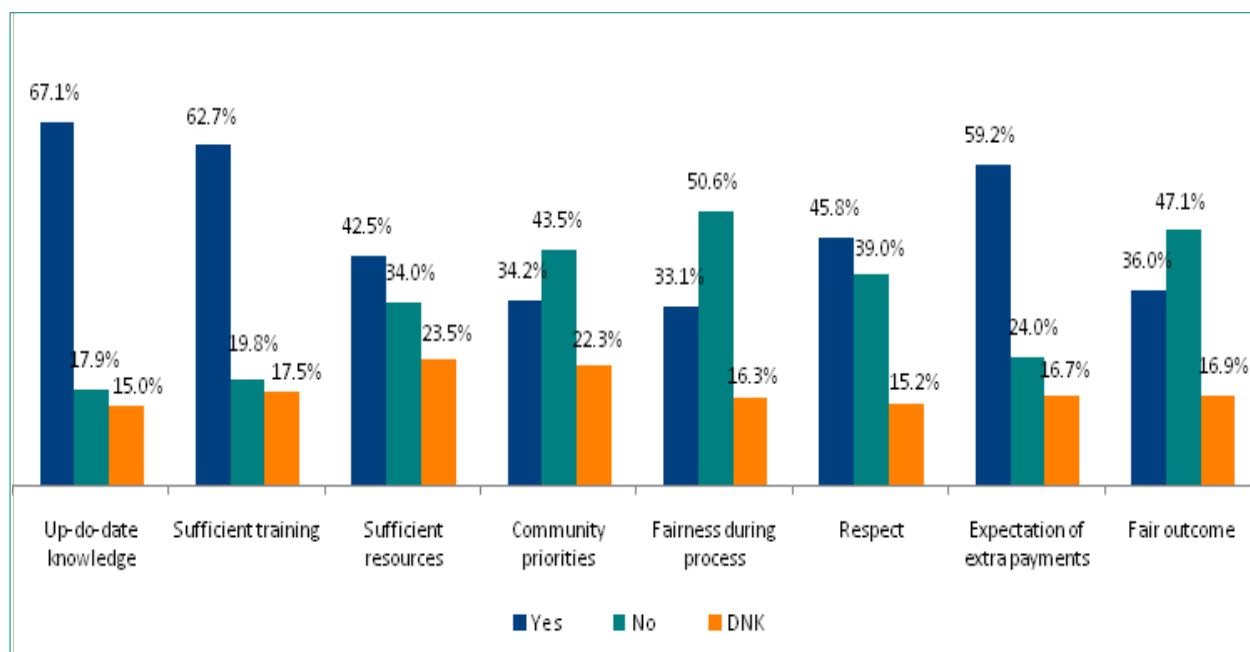
In relation to shared values, less than half the respondents (45.6%) believed that judges would treat them with respect, and the same proportion perceived judges not to be aligned with community priorities. Over half the respon-

dents (52.7%) perceived that judges would not be fair when resolving disputes and almost half (47.9%) thought that judges would not come to a fair outcome if a dispute were brought before them. More than half the respondents (59.8%) thought that judges would expect additional payments for their services.

Law Officers

Respondents' perceptions of law officers were similar to their perceptions of judges (Figure 6.2).

Figure 6.2 Perceptions of Law Officers



Law officers were generally perceived to be competent, having up-to-date knowledge (67.1% of respondents) and sufficient training (62.7%) to carry out their responsibilities. However, fewer respondents (42.5%) believed they had sufficient resources to do so.

In relation to shared values, less than half the respondents (45.8%) thought that law officers would treat respondents with respect. Almost as many (43.5%) thought that law officers were not aligned with community priorities. More

than half (50.6%) thought that law officers would not be fair when resolving disputes and almost half (47.1%) thought that law officers would not come to a fair outcome if a dispute were brought before them. A clear majority (59.2%) of respondents thought that law officers would expect additional payments for their services.

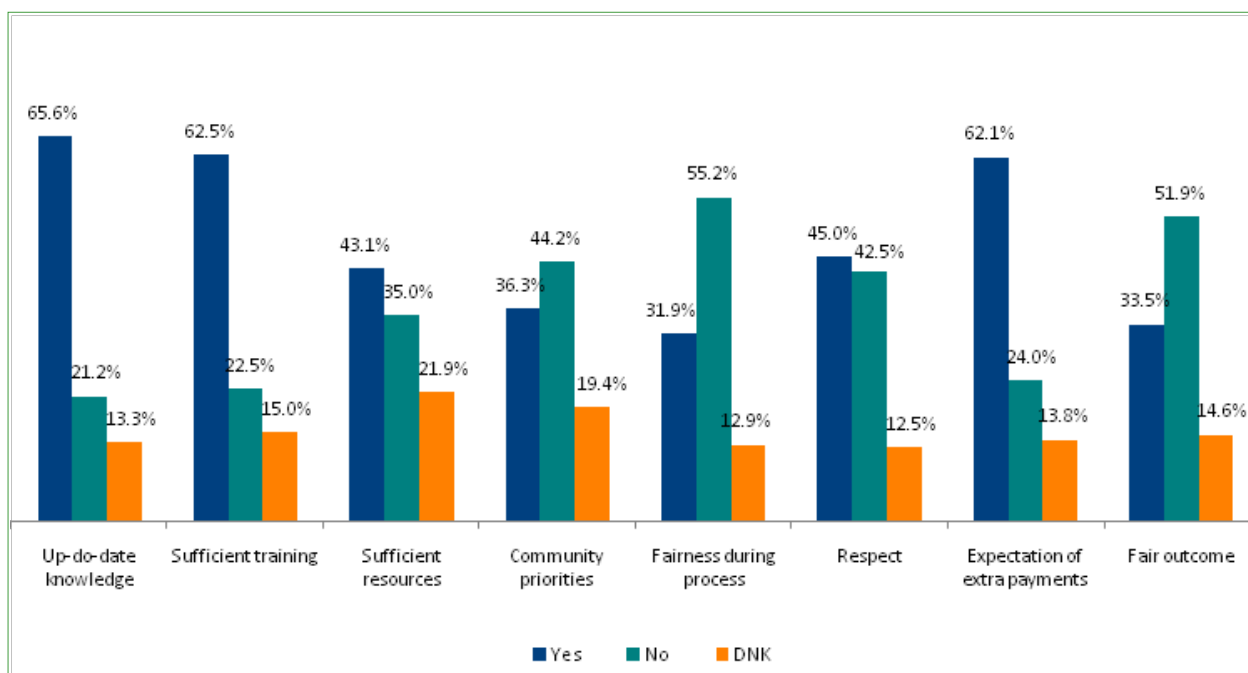
Again, respondents' perceptions of law officers might be explained in part by their relative lack of exposure to the formal justice system (Chapter 3).

Police

Respondents were somewhat more familiar with the police and their role than they were with judges and law officers (Chapter 3). Nonetheless, their perceptions of the police were broadly similar to their perceptions of judges and law officers (Figure 6.3).

treat them with respect. More than half (51.9%) thought that the police would not come to a fair outcome if a dispute were brought before them and even more (55.2%) thought that the police would not be fair when resolving disputes. A significant majority (62.1%) of respondents

Figure 6.3 Perceptions of the Police



Around two thirds of respondents generally perceived the police to be competent, with up-to-date knowledge (65.6% of respondents) and sufficient training (62.5%), although only a minority of respondents (43.1%) thought the police had sufficient resources to carry out their responsibilities.

In relation to shared values, little more than one in three respondents (36.3%) thought that the police are aligned with community priorities and a larger proportion (44.2%) thought that they are not. Well under half the respondents (45.0%) thought that the police would

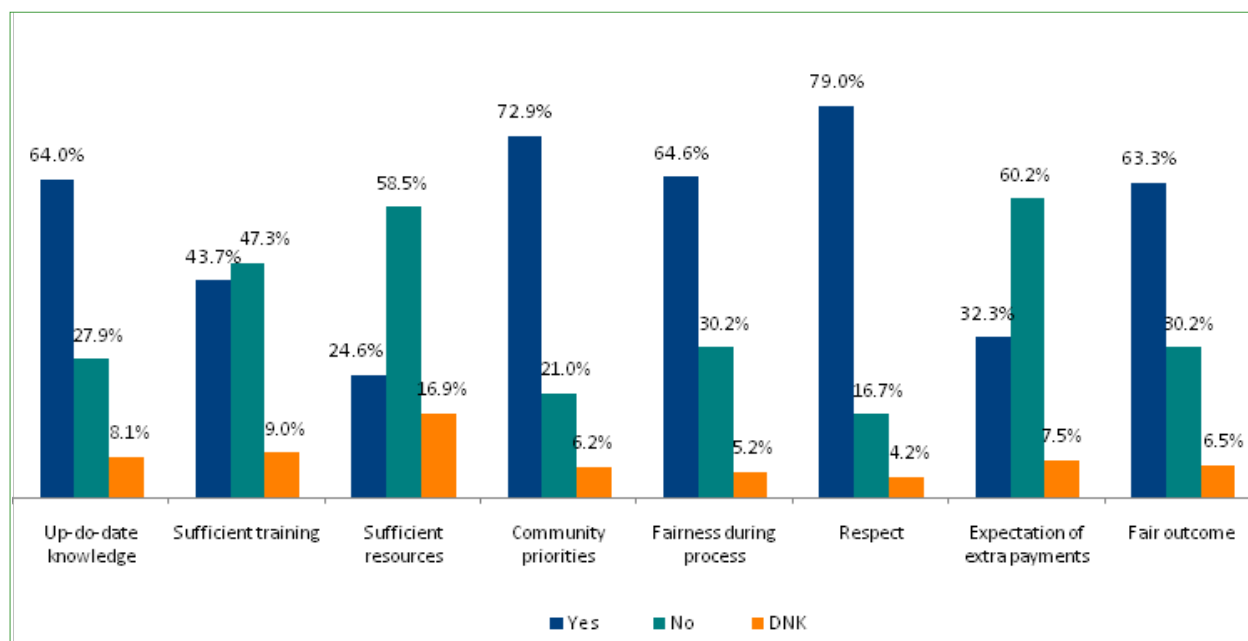
thought that the police would expect additional payments for their services.

Community Leaders

Respondents' perceptions of community leaders⁴⁹ differed quite significantly from their perceptions of judges, law officers and the police (Figure 6.4).

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

Figure 6.4 Perceptions of Community Leaders



Almost two thirds (64.0%) of respondents believed that community leaders have up-to-date knowledge, although less than half (43.7%) thought that they had sufficient training and more (47.3%) thought that they did not. A clear majority (58.5%) thought that they did not have sufficient resources to carry out their responsibilities.

Respondents had much more positive views of community leaders than of judges, law officers and the police regarding their having shared values and right intentions. Significant majorities of respondents believed that community leaders are aligned with community priorities (72.9%), that they would treat respondents with respect (79.0%), that they would be fair when resolving a dispute (64.6%) and that they would come to a fair outcome (63.3%). A clear majority (60.2%) believed that community leaders would not expect extra payments for their services.

Public Trust in Judicial Actors

A composite trust indicator was constructed (on the basis of responses represented in Figures 6.1 to 6.4) to indicate respondents' trust in judges, law officers, the police and community leaders⁵⁰ (Table 6.2).

Table 6.2 Trust in Judicial Actors

| Actors | Trust Indicator |
|-------------------|-----------------|
| Judges | 29.3% |
| Law officers | 29.2% |
| Police | 27.5% |
| Community leaders | 39.0% |

50 A respondent was considered to trust a particular justice sector actor if she/he answered "Yes" to at least two of the three questions relating to the actor's competence, and to at least three of the five questions relating to the actor's right intentions.

The police were the least trusted by respondents. Respondents had similar, rather low, levels of trust in judges and law officers. Community leaders were most trusted, by a considerable margin.

In summary, over 70% of respondents agreed that it is not acceptable for government officials to ask for additional payments. Nonetheless, around 60% thought that judges, law officers and the police would expect additional payments for their services.

Respondents' perspectives on the law's relation to persons with wealth and power could be interpreted as indicating a common belief that legislation, properly administered, can or should protect the rights of ordinary people.

Respondents expressed confidence in the competence of judges, law officers and the police, but were less assured that their values aligned with shared values such as fairness, respect and a lack of corruption. This might reflect respondents' relative lack of exposure to the formal justice system.

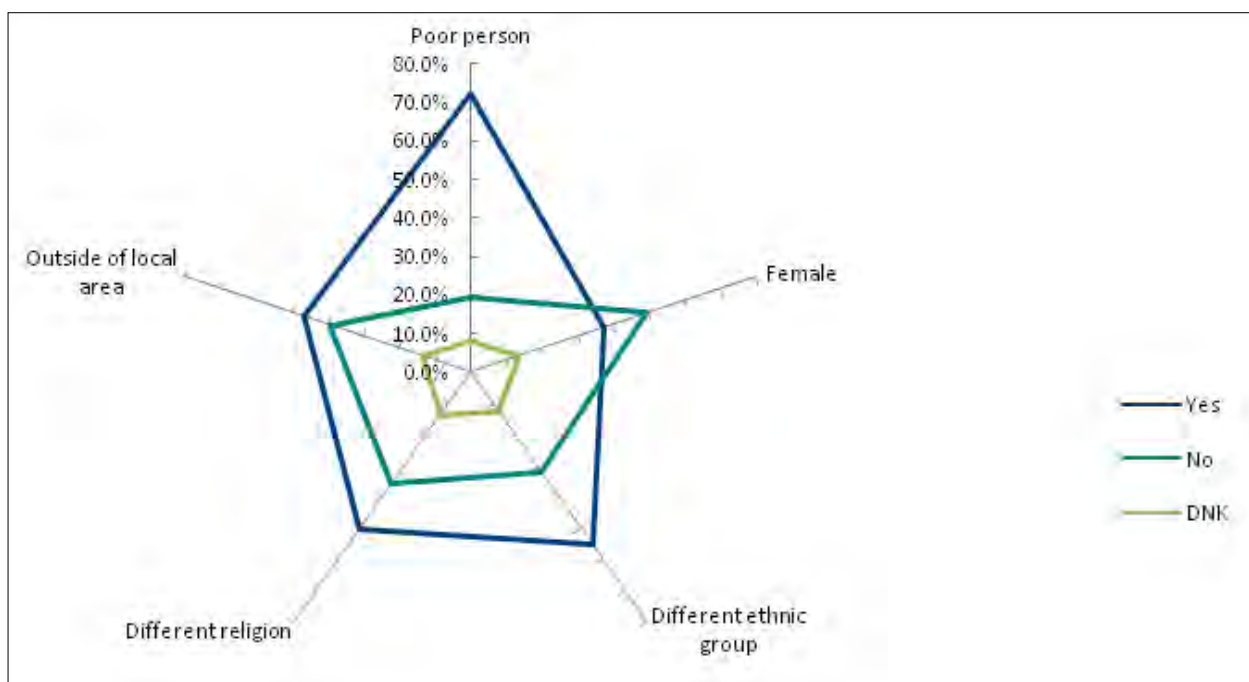
Respondents held more positive views on community leaders. The majority believed that community leaders are aligned with community priorities and ascribe to shared values. Nearly 80% thought that community leaders would treat them with respect.

Overall, the police were the least trusted judicial actors and community leaders the most trusted, by a considerable margin.

PERCEPTIONS OF UNEQUAL TREATMENT

The study sought to gauge the extent to which respondents believed that people would or would not be treated equally in the justice system. Respondents were asked to imagine a scenario in which two suspects who are equally suspected of committing a crime have been detained and charged by the authorities. They were then asked whether, if one of the suspects had certain characteristics, it would place them at a disadvantage (Figure 6.5).

Figure 6.5 Perceptions of Unequal Treatment



The characteristic of being poor was considered much more disadvantageous than any other in respect of a person's treatment by authorities when charged with a crime. Almost three quarters of respondents (72.5%) thought that a suspect who was poor would be placed at a disadvantage. This perception is broadly consistent with that presented in Chapter 3 in relation to broader factors that determine how well a person is treated in Myanmar society.

More than half the respondents thought that a suspect who was of a different ethnic group (55.4% of respondents) or a different religion (50.6%) than that of the public official would be at a disadvantage. Less than half the respondents (46.9%) thought that a suspect who was from a different part of the country, and not from the local area, would be at a disadvantage. More than one in three respondents (37.1%) believed that a female suspect would be at a disadvantage. These responses suggest a prevalent perception that officials in the justice system do not act in a non-discriminatory manner.

In summary, respondents perceived that officials in the justice system do not always treat crime suspects equally. Respondents believe

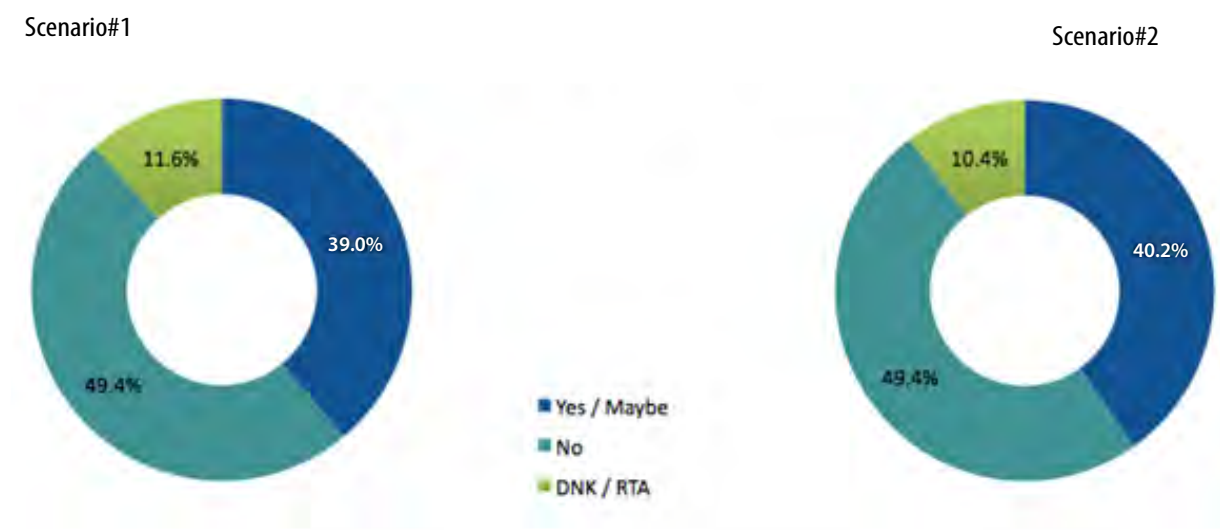
that the poor are most at risk of not being treated equally with others under the law when charged with a criminal offence.

ATTITUDES TO ACCOUNTABILITY

The study explored respondents' attitudes to holding government officials to account, by testing their tendency to report or not report corrupt practice. Respondents were asked what they would do in two hypothetical situations in which officials asked for extra payment: (i) a local official asking Ks.300,000 of a person wishing to register their land; and (ii) a township official asking Ks. 150,000 of a person wishing to renew their identity documentation.

The proportions of respondents who indicated that they would or might report the incidents, and those who would not, were virtually the same in both scenarios. Almost half the respondents reported that they would not report the behaviour of the officials in the hypothetical situations, whereas two out of five indicated that they would or might report the incidents (Figure 6.6).

Figure 6.6 Attitudes to Accountability



The minority who would or might report the hypothetical incidents would take almost identical action in response to each: most of this minority would report the incident internally to the parent department. The highest proportions of “reporting” respondents (14.4%; 75 of 203) would report the first situation to the township Land Records Department, and the second situation to the township Immigration Department (20.8%; 108 of 209). The remaining “reporting” respondents would most likely report to the township GAD (Scenario 1: 5.8%; Scenario 2: 3.7%) or the township court (Scenario 1: 3.7%; Scenario 2: 2.7%).

“Reporting” respondents also had similar expectations of the outcomes of their reporting in each scenario. In both instances, the most common response was that they would expect action to be taken against the offending official (Scenario 1: 37.9%; Scenario 2: 43.1%). The second most common response was that they expected not to have to pay the sum demanded, after reporting the incident (Scenario 1: 12.9%; Scenario 2: 12.1%). Few expected that reporting the incident would have no impact on the outcome (Scenario 1: 11.3%; Scenario 2: 2.7%).

The reasons given by the 49.4% of respondents who indicated that they would not report either incident are presented in Figure 6.6(a) in Annex II. In both hypothetical scenarios, these “non-reporting” respondents clearly identified corruption as the main factor that inhibited attempts at securing accountability (Scenario 1: 46.7%, 120 of 257; Scenario 2: 54.9%, 141 of 257). They recognised the entrenched nature of the problem (e.g., “Land [registration] will only be available when we pay. So I will not report”; “If I am able to easily obtain the identity documentation when I pay Ks.150,000, then I will not report”; and “I will be satisfied if they do what they say they will if I pay. So I will pay.”). Among those who identified corruption as a key reason for not reporting, some also characterised it as a barrier that would prevent them from either obtaining land registration or renewing identity documentation as presented in the two hy-

pothetical situations (e.g., “I will neither report [the incident] nor [apply for land registration] as they ask for a lot of money”; and “I will only [renew my identity documentation] when the government makes it easily available. I am not going to report it.”).

The second significant reason that respondents would not report the hypothetical incidents was that they were fearful of doing so (Scenario 1: 39.7%, 102 of 257; Scenario 2: 35.4%, 91 of 257). The first dimension of such fear was that complaining about being asked for extra payments would only lead to more problems for the complainant (e.g., “I think the problem will be bigger if I report; so I will not report”; “There will be [problems] if I report; so I will not report”; and “The identity documentation will never be available if I report. That is why I will not report.”). Second, respondents were apprehensive about having to deal with formal government bureaucracy (e.g., “It is complicated. I do not want to go to the offices”; and “I am not going to report. I don’t want things to be complicated. I will not waste my time, and will pay the money.”). The third dimension of fear was generally expressed (e.g., “I dare not report”; and “I dare not report, and will [apply for renewal of identity documentation] even if I have to borrow money to do it.”).

Other factors that influenced the majority of respondents who would not report the incidents of corruption included:

- A lack of knowledge, education or experience about what could be done and who could provide assistance (e.g., “I don’t know if I can report, so I will pay as asked”; “I will not report as I do not have any experience”; “I am not going to report, nor apply for land registration. I am not going to report as I am not educated”; “As I do not understand things well myself, it is not good to report. I will renew my identity documentation if I can afford it, but I am not going to report”; and “I am not satisfied. But I do not know what to do and

where to report. So I am not going to report or apply for [land] registration.”);

- The expectation that complaining will not change anything (e.g., “No action will be taken when we report; so I will not report”; and “Things will not be different if we report. [Reporting] will even cost you money.”);
- A general refusal to report such incidents (e.g., “I will neither report nor apply for [land] registration”; and “I am not going to renew my identity documentation. I am not going to pay. I am not going to report.”);
- Cost (e.g., “As I do not have money, I am not going to report or renew my identity documentation.”);
- A preference for self-reliance (e.g., “I will negotiate to reduce the amount. I am not going to report as I don’t want problems”; “As identity documentation is important, I will negotiate, not report”; and “I will ask the superior of the official who asked for money as to why they ask for so much money.”);
- Discrimination (e.g., “I would like to renew my identity documentation if it is possible to do so [by paying money]. But in reality, we will not be able to get it [even by paying money], and that is the difficulty for us”; and “If identity documentation will be available for Chinese [only] by paying only Ks.150,000, I will not report.”);
- Language difficulties (e.g., “As I cannot speak Burmese very well, I am not going to report, and will pay to renew the identity documentation.”);
- Helplessness (e.g., “I have no one to rely on, and no one to help me.”).

Female respondents were more likely than male respondents to say they would not report the hypothetical incidents. In respect of the first scenario, more than half the female respondents (51.5%, compared with 47.3% of male respondents) said they would not report being asked for extra payment for land registration. Exactly the same proportions said they would not report the second scenario, being asked for extra payment for renewal of identity documentation. Conversely, female respondents were significantly less likely than males to report either such incident (Figure 6.6(b), Annex II).

High proportions of Kokang (75.0%), Ta’ang/Palaung (62.5%) and Chinese (62.4%) respondents stated that they would not report being asked for extra payment in relation to land registration. Even higher proportions of Kokang respondents (77.5%), respondents of South Asian descent (70.0%) and Chinese respondents (65.0%) indicated that they would not report being asked for extra payment for renewal of identity documentation (Table 6.3, Annex II).

In summary, almost half the respondents would not report two hypothetical incidents involving corruption. Females were more likely than males not to report. A majority of those unlikely to report corrupt practice cited corruption itself as inhibiting attempts to secure accountability. A majority also attributed their reluctance to report to fear, particularly that they would have to pay, and apprehension about having to deal with the government bureaucracy.

The minority of respondents who would or might report corrupt practice most commonly expected action to be taken as a result but did not have high expectations of official accountability.



CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

Photo: Water tank and buckets ready for fire safety in Say Khun Ward, Tachileik Township, eastern Shan State

The results of this study give some indication of the perspectives of respondents in 14 study sites (seven wards and seven village tracts) across southern, eastern and northern Shan State, in relation to access to justice and the rule of law, including public accountability. The study identified the basis for the disputes respondents have experienced, respondents' concerns about justice, the impact such problems have had on them, the ways in which they have sought to settle such disputes and resolve their concerns, and the challenges they have encountered in doing so.

The socio-economic characteristics of the respondents (Chapter 2) provide an important context to this research, revealing some of the factors shaping the environments in which the concerns about justice arise. Those factors also influence how and to what extent individuals and communities are able to seek help to access justice in response to their concerns.

To reiterate the conceptual discussion presented in Chapter 1, this study revealed shared values to be central to the exercise of access to justice. These shared values also inform people's expectations of judicial processes, whether in formal, quasi-formal/administrative or informal contexts. These values include equality before the law, 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. They also imply a common expectation of accountability, one of the prerequisites of good governance.

The research confirmed these conceptual underpinnings of the quest for access to justice. Two overarching values – substantive equality and accountability – and the associated issue of low public trust in judicial authority emerged from the reported experiences and perspectives of respondents in Shan. The key findings

summarised below, and the consequent recommendations for justice sector actors and policymakers, and Development Partners, are presented within this framework.

ACCESS TO JUSTICE

In Shan State, as elsewhere, respondents' perceptions of the law appeared to confirm a gap between provisions of the law and reality. Some officials who were interviewed recognised the importance of public awareness for promoting the rule of law and access to justice and advocated awareness-raising, for example on the laws regarding land and drugs.

The most common disputes respondents had experienced revolved around land, and land-related issues remained their greatest concern. Many such disputes and concerns arose from the difficulties people experienced in attempting to obtain land registration, or in seeking redress for previously confiscated land. The formal pathways to resolution of land and land-related property disputes were generally longer than for other types of disputes, and some abuse of official authority was reported. For these reasons, people were more likely to seek access to justice on land-related matters through informal channels or with the assistance of local third parties. The study uncovered multiple cases of farmers attempting to claim back, or obtain compensation for, confiscated land by writing letters to their township administration and Farmland Management Committee, or asking for help from members of Parliament. In most cases, they were still waiting for answers.

To a lesser extent, disputes over debt had also occurred. These were commonly between individuals and often in the context of "collective savings groups". An underlying cause of cycles of indebtedness is the difficulty of accessing capital. When disputes arose out of borrowing and lending activities, respondents generally

did not have much recourse to help. Although some local administrators and community leaders sometimes mediated such disputes, others specifically declined to do so. Respondents did not always report such disputes to the police, nor did they try to seek help from government officials because the collective savings groups commonly operated without official documentation or authorisation. The formal justice system had little involvement in resolving such disputes, although some cases were processed through the courts as matters involving criminal breach of trust.

When respondents attempted to settle the disputes of greatest concern to them, over half of them began by attempting direct negotiations with the other party to the dispute. Those few who achieved settlement through direct negotiation did not always achieve a favourable and/or satisfactory final outcome. Eighty-five percent of all respondents involved in a dispute sought assistance from a third party, either directly or when initial negotiations were not successful. Less than half of all matters of priority concern were settled using these methods: 58% of those priority matters remained unresolved. This indicates that most respondents had extremely limited access to justice, in the sense of effective pathways to dispute resolution.

While land-related issues were the priority concern for respondents, the prevalence of drugs and drug addiction is perhaps the most significant issue at community level. Respondents have little resilience or recourse against the devastating impacts of drugs on their families and communities, and are able to do little but tolerate the increased public insecurity that is a further consequence of the problem. Respondents and community leaders alike did not appear to have trusted sources of higher authority on whom they could rely for help. The response of the criminal justice system was one of law enforcement, with the police sometimes assisted by local militias and many drug users

being sentenced to imprisonment. The criminal justice system does not approach the issue from an alternative perspective that would recognise drug taking and addiction as a health issue that also has major negative impacts on citizens and society.

ACCESS TO JUSTICE: KEY RECOMMENDATIONS

Regarding land:

- Ensure that information relating to the process and procedures relating to the return of lands previously seized by the State or other parties are disseminated in a public, accessible and transparent manner.
- Build on and further efforts at developing a centralised land registry that recognises ancestral/traditional/customary land tenure equally with official land tenure.
- Consider piloting a specialised court to deal with land cases that are appealed from Farmland Management Committees, and in this regard amend the 2012 Farmland Law as required.
- Explore localised mechanisms to secure the return or redistribution of, or compensation for, previously confiscated land that involve full and informed participation by all affected parties, to enable the specificities of each situation to be fairly considered.

Regarding poverty and debt:

- Undertake further studies to better understand the causes, consequences and varied impacts on different populations of debt and debt-related issues.
- On the basis of extant studies of debt and debt-related issues, design and implement measures to address these issues in an equitable manner.
- Consider and pilot a simple form contract tem-

plate for community borrowing and lending at the level of local administration.

- Increase financial services to the poor.

Regarding drugs:

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

Regarding legal aid:

- Support the provision of legal aid to better ensure due process and constitutional guarantees are provided by the justice system.

SUBSTANTIVE EQUALITY

Almost half the respondents perceived that not all people have equal rights before the law in Myanmar. Respondents overwhelmingly cited wealth, and large majorities cited education and political connections, as the main factors that determine how well a person is treated in Myanmar society. Their perspectives on the law's relation to persons with wealth and power could be interpreted as indicating the belief that legislation, properly administered, can or should protect the rights of ordinary people.

Significant majorities of respondents demonstrated their adherence to shared values such as equality before the law, the equality of men and women, and that everyone deserves equal care and concern by the government regard-

less of religion or ethnicity. However, many had been subject to unequal treatment within their communities and in their engagements with the State.

There are serious concerns about the lack of effective legal protection of women and vulnerable groups in Shan, as elsewhere in Myanmar. The victims of domestic violence, sexual assault and human trafficking rarely have access to justice, effective advocacy and protection of their rights, and commonly endure their situation in silence. Influential community leaders usually only become involved when violence is ongoing. The MAAF has limited authority and ability to assist women; its influence appears to have decreased since Myanmar's transition to civilian government.

A few cases of rape did reach the criminal justice system and were successfully prosecuted. Few civil divorce cases cited domestic violence as a cause for proceedings, and all cases of physical assault arising from domestic violence that were cited during the study were in the process of being withdrawn from court. The courts do not appear to issue judicial protection orders.

There was no judicial recourse available to those respondents who encountered discrimination on the basis of their ethnic or religious minority status. Some minority groups – especially those of South Asian descent – were unable to acquire identity documentation, whereas other people could do so by the payment of large sums of money. Access to justice in response to discrimination (and corruption) in the issuance of civil documentation was extremely limited.

Respondents perceived that officials in the justice system do not always treat crime suspects equally. They believe that the poor are most at risk of not being treated equally with others under the law when charged with a criminal offence.

There was also evidence of differential access to public services, such as water and electricity, and a lack of, or ineffective, regulation of commercial activities that resulted in harmful effects on the health of selected communities.

The nature of these concerns about justice, and respondents' experiences, indicate that people in Shan State do not always enjoy the rights and protections they are entitled to under the law. There is a need to ensure that the constitutional principles of equality and justice – as enshrined in Articles 6(e) and 347 – are upheld in practice. There is a need to look beyond formal, *de jure*, equality and at the notion of substantive equality.

Constitutional and legal provisions enshrining the principle of equal treatment of all citizens under the law are essential. Addressing the problem of unequal treatment and limited access to justice for many in Shan State requires multifaceted approaches that go beyond the blunt instrument of legislation, in order to ensure consistent treatment of people based on the principle of substantive equality.

This means that, even as attention is paid to ensuring consistent treatment, focus must also be directed towards the treatment of people as equals, which translates to having equal concern and respect for individuals, including taking into account different initial perspectives and positions. All this implies the fundamental need to address the root causes of differential treatment of people and limited access to justice, particularly for more marginalised groups in society.

SUBSTANTIVE EQUALITY: KEY RECOMMENDATIONS

Regarding education and social 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 at schools to all children at an appropriate age.
- Carry out inclusive and transparent consultations with all relevant stakeholders on the development of a multilingual education policy as part of the nationwide education reform process.
- Develop an ethnic language and multilingual education policy as part of the nationwide education reform process.

Regarding the legal protection of women:

- Ensure that all formal justice sector actors receive the appropriate training and sensitisation on gender equality, and highlight in particular the legal protection of women and vulnerable groups.
- Consider and pilot the introduction of judicial protection orders for cases of domestic violence.
- As a policy decision, ensure that cases can only be withdrawn from court where it is in the interests of justice.
- Through the Rule of Law Centres, provide training and sensitisation on gender equality, targeting in particular those who play a role in informal dispute settlement (e.g. CLA representatives, religious leaders, community leaders, etc.).

Regarding women's access to justice and other services:

- In consultation with all relevant stakeholders, pilot One-Stop-Shop services in Shan State that assist women on several fronts, including physical and psycho-social health services, legal counsel, legal aid referral and promotion of legal awareness.

Regarding human rights:

- Institute specific policies prohibiting all forms of discrimination in civil service recruitment and human resources policies.
- 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.
- Adopt the National Strategy on Development of Statistics as a platform for appointing an independent Civil Registrar-General, who will have clear responsibility for advancing a universal and equitable civil registration agenda, and for finalising the attendant legal framework.
- 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.

Regarding civil registration:

- Uphold the commitment – pledged in a 2014 Ministerial Declaration on civil registration and vital statistics⁵¹ – to achieve universal and equitable civil registration of births, deaths and other vital matters in Shan State by: (i) regis-

tering the births of all children; and (ii) providing all individuals with legal documentation, as necessary, allowing them to claim their identity and civil status and to ensure their rights.

- Create an independent and competent process for advancing a universal and equitable civil registration agenda.
- Review and revise the 1982 Citizenship Law in line with the 2008 Constitution and Myanmar's international human rights obligations.
- Clarify the legal framework for citizenship and residency to bring it into 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.
- Make available information relating to procedures for obtaining civil documentation in ethnic languages.

ADMINISTRATIVE JUSTICE AND ACCOUNTABILITY

The majority of respondents in this study did not enjoy the fundamental right of access to justice. Overall, they were clearly not engaged to any meaningful extent with the formal justice system. Many were involved in disputes as a consequence of discrimination (in law and in practice) or abuse of state authority, for which they have no recourse within the formal justice system.

Abuse of authority by public officials is a particular obstacle to access to justice. Given the discriminatory attitudes and practices some

51 Ministerial Declaration to "Get Every One in the Picture" in Asia and the Pacific, in ESCAP, Report of Ministerial Conference on Civil Registration and Vital Statistics in Asia and the Pacific, 10 Dec 2014, E/ESCAP/MCCRVS/4.

respondents experienced in their interactions with public authorities, negotiations with public authorities to secure access to justice, if they are entered into at all, are likely to be inflected by the complainant's economic status, level of education, ethnicity, religion and gender, among other factors, and the outcomes tainted accordingly.

Such matters impose severe restraints on access to justice. This is evident in respondents' responses to hypothetical situations in which they encounter corrupt practice by state officials. In Shan State, more respondents indicated that they would not report abuse of authority by public officials than indicated they would. It is of particular concern that most identified the existence of corruption and their own fear as the main factors that would inhibit attempts to secure the accountability of public officials.

Respondents clearly expressed their adherence to the principle of public accountability and their expectation that it would be delivered as of right. Two particular dimensions of public accountability emerged from their priority concerns relating to land disputes, obtaining civil documentation, and bribery or corruption. The first dimension – evident in relation to difficulties obtaining civil documentation and to certain types of land disputes – demands that those who exercise some form of state function, or who have a role in the provision of public services, must be held to act in ways that are within their lawful spheres of authority (administrative law). The second dimension of accountability pertains squarely to the issue of bribery and corruption. This dimension has strong associations with the first, and constitutes abuse of authority for personal gain.

These dimensions of accountability indicate priorities for future action: (i) to promote the concept and practice of administrative justice (broadly construed to include all legitimate means of seeking redress in relation to abuse of public authority and quasi-judicial decision-making by officials of government agen-

cies); and (ii) to strengthen measures targeted at addressing corruption.

These priorities are essential to ensuring administrative justice and addressing the abuse of authority by public officials.

ADMINISTRATIVE JUSTICE AND PUBLIC ACCOUNTABILITY: KEY RECOMMENDATIONS

Regarding public accountability and corruption:

- Increase the accountability and transparency of all government ministries/departments/agencies by making available, in a public and accessible manner, information on internal oversight structures as well as mechanisms and processes for public complaints or grievance redressal.
- Publicise disciplinary measures taken against any public official, including the reason for disciplinary action having been taken.
- Publicise in an accessible manner all relevant official fee schedules and processing times for government services at the township and ward/village tract administration offices.

Regarding administrative justice:

- 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.

To those working in partnership with the Myanmar Government:

- Undertake further research into the related areas of administrative justice and anti-corruption, following which provide appropriate recommendations to the Myanmar Government with the aim of ensuring that those who

exercise public functions are held accountable for their actions.

- Initiate and/or host roundtable discussions, talks, etc., with justice sector actors, parliamentarians, policymakers and the broader public on the concept of administrative justice.
- Undertake further research into the area of criminal torts, following which provide appropriate recommendations to the Myanmar Government with the aim of strengthening rights protections, particularly where these may appear to be in tension with the promotion of economic development.

PUBLIC TRUST IN JUDICIAL AUTHORITY

Respondents clearly preferred to settle their disputes locally, using non-formal mechanisms rather than accessing the formal justice system – underscoring the relative legitimacy of non-formal pathways to justice.

Third parties played a significant role in attempts to settle disputes outside the formal justice system. Those who acted within geographic spheres of influence were the most prominent in such roles. In Shan State, where a single village tract or ward might cover a large geographic area, the *Dagyis* exercised more authority over their communities and were more involved in settling day-to-day problems than were ward and village tract administrators. An important source of their authority, particularly those who belonged to the same ethnic group as their community, stems from shared cultural and religious bonds.

Numerous other individuals were recognised as being influential in their communities, and they were also called upon to assist with dispute settlement. This suggests that a person-centred social and political structure retains at least some relevance in the study sites across Shan State. Such influential individuals commonly have Myanmar language skills, and thus the ability to communicate with government officials, and have some level of education and connections to sources of authority, as well as certain inherited qualities or inherent characteristics.

Respondents clearly trusted their community leaders more than they trusted those with a role in the formal justice sector. They generally perceived judges, law officers and the police to have up-to-date knowledge and sufficient training, but did not believe they had sufficient resources to carry out their responsibilities. Significantly, respondents did not believe that formal justice sector actors adhere to the shared values of fairness, respect and a lack of corruption.

Given that enhancing public trust in the justice system is a priority for those with a role in the justice sector, policies that are directed towards promoting such shared values (as well as principles such as equality before the law, etc.) in communities, especially in the form of increasing transparency, independence and fairness in the adjudication process, will be important.

At a broader level, the general preference for dispute settlement within localised, non-formal for a also suggests that greater transparency will benefit processes other than adjudication, such as the return and redistribution of land previously seized by the State.

PUBLIC TRUST IN JUDICIAL AUTHORITY: KEY RECOMMENDATIONS

Regarding the local administration of justice:

- Ensure that all formal justice sector actors, including 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, rule of law principles, fair trial and due process, accountability, mediation principles, international standards related to the administration of justice, etc.
- Continue dialogue skills training for local administrators, and broaden the delivery of such training to include community leaders.

Regarding customary justice systems:

- Undertake further targeted research – utilising participatory action research methodologies – on customary justice systems to determine engagement strategies with such systems.
- Develop a clear policy on the status of customary law and its relationship to the formal justice system.

Regarding the judiciary:

- Assure 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.

Regarding the transparency of judicial proceedings:

- Encourage the Office of the Supreme Court of the Union to direct all courts to publicise reasoned court decisions.

- Ensure that the costs and expected time schedules for judicial proceedings are posted in the public lobby of all courts.
- Establish and make publicly accessible clear sentencing guidelines to be adhered to by judges.

Regarding professional development:

- Ensure the integration of continuous professional development (at the regional/state capital level) as part of the professional duties and responsibilities of all justice sector actors.
- Ensure that all public servants receive training on gender and substantive equality prior to commencing duties.
- Improve any existing continuous professional training and skills development across the justice sector, with an emphasis on ethics and equitable conduct.

Regarding public engagement with the justice system:

- Through the Rule of Law Centres:
 - Disseminate information on the functioning of the criminal justice system;
 - Provide training and sensitisation on gender equality, targeting in particular those who play a role in informal dispute settlement;
 - Pilot a court monitoring project with the aim of better understanding the functioning of the formal justice system;
 - Pilot a court monitoring project with the aim of better understanding how legal aid will best serve court clients.

ANNEX I

METHODOLOGY

In light of the current limited state of knowledge relating to access to justice issues in Myanmar, the complexities and sensitivities of the research locations, and the lack of reliable sampling frames, the research exercise proceeded with a qualitative methodology.

RESEARCH QUESTIONS AND INSTRUMENTS

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?

The study adopted mixed approaches, utilising a structured interview questionnaire at the household level, which was supplemented by focus group discussions at the village/ward level and key informant interviews at the individual level.

In parallel to the research instruments administered at the local level, a separate set of semi-structured interviews was carried out with judges, law officers, police officers and GAD officials at township and district levels. These interviews sought the perspectives of formal justice sector actors in relation to local priority concerns about justice, institutional roles in addressing these concerns, and institutional needs and challenges encountered by these ac-

tors when carrying out their respective duties and responsibilities.

Additionally, a separate set of semi-structured interviews was conducted with representatives of CLAs at township and state levels. These interviews were aimed at understanding the role of CLAs and the various cultural practices applied in informal dispute settlement.

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 language 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.

STUDY SAMPLE

In Shan State, the study was conducted in seven selected townships – Taunggyi, Loilen, Hsihseng, Kengtung, Tachileik, Lashio and Kutkai – across southern, eastern and northern Shan. In each township, one ward and one village tract were purposively selected in close consultation with GAD officials. The study did not include internally displaced populations.

Sample sizes are presented in Table 1. Quotas based on respondents' sex (50:50 ratio) and self-identified ethnic group were imposed for the structured interviews.⁵²

52 The two criteria of sex and ethnicity were prioritised in the construction of this non-probability quota sample to ensure that these hypothesised pertinent characteristics, which may affect access to justice, were included in the research (Table 2.1).

Table 1.1 Township-wise Sample Performance

| Township | House Hold Structured Interviews | | Focus Group Discussions | | In-depth Interviews | | Semi-structured Interviews | |
|---------------|----------------------------------|------------|-------------------------|-----------|---------------------|-----------|----------------------------|------------------|
| | F | M | F | M | F | M | CLA Representatives | State Officials* |
| KENGTUNG | 34 | 36 | 12 | 10 | 5 | 11 | 4 | 10 |
| TACHILEIK | 37 | 33 | 14 | 9 | 3 | 14 | 4 | 21 |
| TAUNGGYI | 38 | 41 | 12 | 10 | 8 | 10 | 18 | 14 |
| HSIHSENG | 34 | 34 | 11 | 13 | 7 | 20 | -- | 5 |
| LOILEM | 37 | 38 | 12 | 11 | 4 | 13 | -- | 9 |
| LASHIO | 40 | 38 | 10 | 10 | 3 | 10 | 13 | 16 |
| KUTKAI | 40 | 40 | 10 | 12 | 9 | 12 | -- | 7 |
| TOTALS | 260 | 260 | 81 | 75 | 39 | 90 | 39 | 82 |

* Including officials at both township and district levels

DATA COLLECTION

Field research was carried out between 6 June and 9 July 2016. The study adopted a mixed approach: a structured interview questionnaire was administered to 520 households, which was supplemented by focus group discussions involving 156 participants at the village/ward tract level, and 129 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 CLAs at township and state levels.

Two international consultants led the fieldwork and also carried out interviews with state officials and representatives of CLAs. A Myanmar research organisation, Enlightened Myanmar Research Foundation (EMReF), which had some prior experience on rule of law/access to justice/plural legal systems studies, was contracted by UNDP to carry out research at the ward

and village levels.⁵³ The Enlightened Myanmar Research Foundation (EMReF) team spent three days in each study site conducting interviews and discussions.

“In total, 33 interpreters were hired and trained for the ward and village level field research: eight Shan-Myanmar interpreters, six Kokang-Myanmar interpreters, six Pa-O-Myanmar interpreters, five Jinghpaw-Myanmar interpreters, four Ta’ang/Palaung-Myanmar interpreters, two Akha-Myanmar interpreters, and two Lahu-Myanmar interpreters. All, except three, were either students or graduates from Taunggyi, Kengtung, Lashio or Ayetharyar Technological Universities. Some were additionally either teachers of their own ethnic languages, or had prior interpretation experience.”

⁵³ In addition to an initial week-and-a-half-long training on key concepts and issues in October 2015, the EMR team (10 females and four males) received a three-and-a-half day refresher training on the Kachin context in January 2016.

ETHICAL CONSIDERATIONS

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

RESEARCH CHALLENGES AND LIMITATIONS

Research Preparation

Preparation for the research – including study design, development and translation of research instruments, and training of the research team – was carried out in less than two months. While the aims of the research have been met in Shan State, the process would have benefitted from a lengthier preparation period, including more time for revision of research instruments after the pre-test.

Data Collection and Subject Matter

Although efforts were made to ensure the reliability and validity of responses, the possibility of underreporting of disputes and concerns about justice cannot be eliminated, given the potentially sensitive nature of the subject matter and the relatively short period of three days for data collection at each study site (which presented a challenge in terms of building trust with communities), thus potentially biasing the findings in any of several directions.

Language Barriers

While efforts were undertaken to recruit and train various language interpreters for the research, the possibility of some respondents

misunderstanding certain questions that were asked of them cannot be eliminated, given the difference in meanings of certain ideas and concepts in particular languages.

Representativeness

Given purposive selection of study sites and respondents, the findings describe only the study sample. Statistically significant comparisons cannot be made among research respondents, and the findings cannot be generalised to any wider population.

ANNEX II

SUPPLEMENTARY FIGURES AND TABLES

CHAPTER 2: CHARACTERISTICS OF STUDY SITES AND RESPONDENTS

Figure 2.1(b) Myanmar Language Literacy by Sex

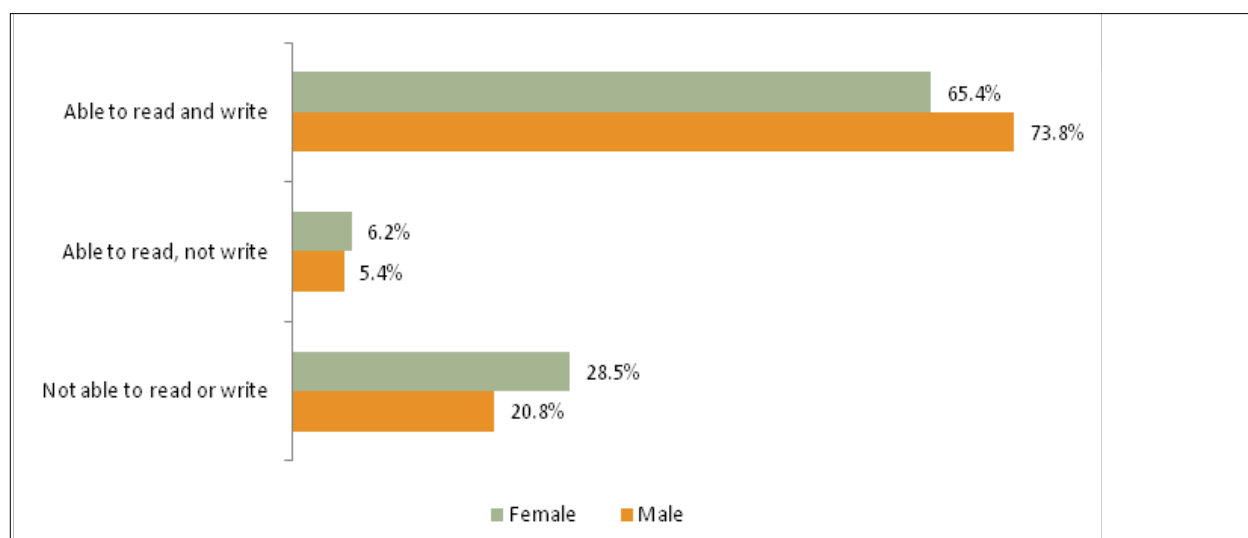


Table 2.5 Monthly Household Income Levels by Ethnicity

| Monthly HH Income Levels | Ethnicity | | | | | | | | | | TOTALS |
|--------------------------------|------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------------|---------------------|------------|
| | Shan | Pa-O | Akha | Bamar | Chinese | Kachin | Kokang | Lahu | Ta'ang / Palaung | South Asian descent | |
| Less than Ks.50,000 | 7 | 5 | 2 | 0 | 0 | 3 | 2 | 5 | 4 | 1 | 29 |
| Ks.50,000 to under Ks.100,000 | 16 | 16 | 13 | 2 | 2 | 2 | 3 | 5 | 4 | 3 | 66 |
| Ks.100,000 to under Ks.200,000 | 31 | 30 | 12 | 10 | 8 | 9 | 10 | 16 | 13 | 12 | 151 |
| Ks.200,000 to under Ks.300,000 | 18 | 11 | 11 | 8 | 6 | 10 | 5 | 6 | 5 | 7 | 87 |
| Ks.300,000 to under Ks.400,000 | 14 | 2 | 1 | 12 | 3 | 8 | 7 | 2 | 6 | 6 | 61 |
| Ks.400,000 to under Ks.500,000 | 4 | 1 | 0 | 3 | 4 | 3 | 5 | 0 | 4 | 3 | 27 |
| Ks.500,000 to under Ks.800,000 | 6 | 2 | 0 | 2 | 4 | 4 | 2 | 2 | 1 | 8 | 31 |
| Ks.800,000 and above | 7 | 0 | 1 | 2 | 9 | 1 | 2 | 2 | 0 | 0 | 24 |
| DNK / RTA | 17 | 13 | 0 | 1 | 4 | 0 | 4 | 2 | 3 | 0 | 40 |
| Total | 120 | 80 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 520 |

Figure 2.2(a) Household Assets by Income Levels

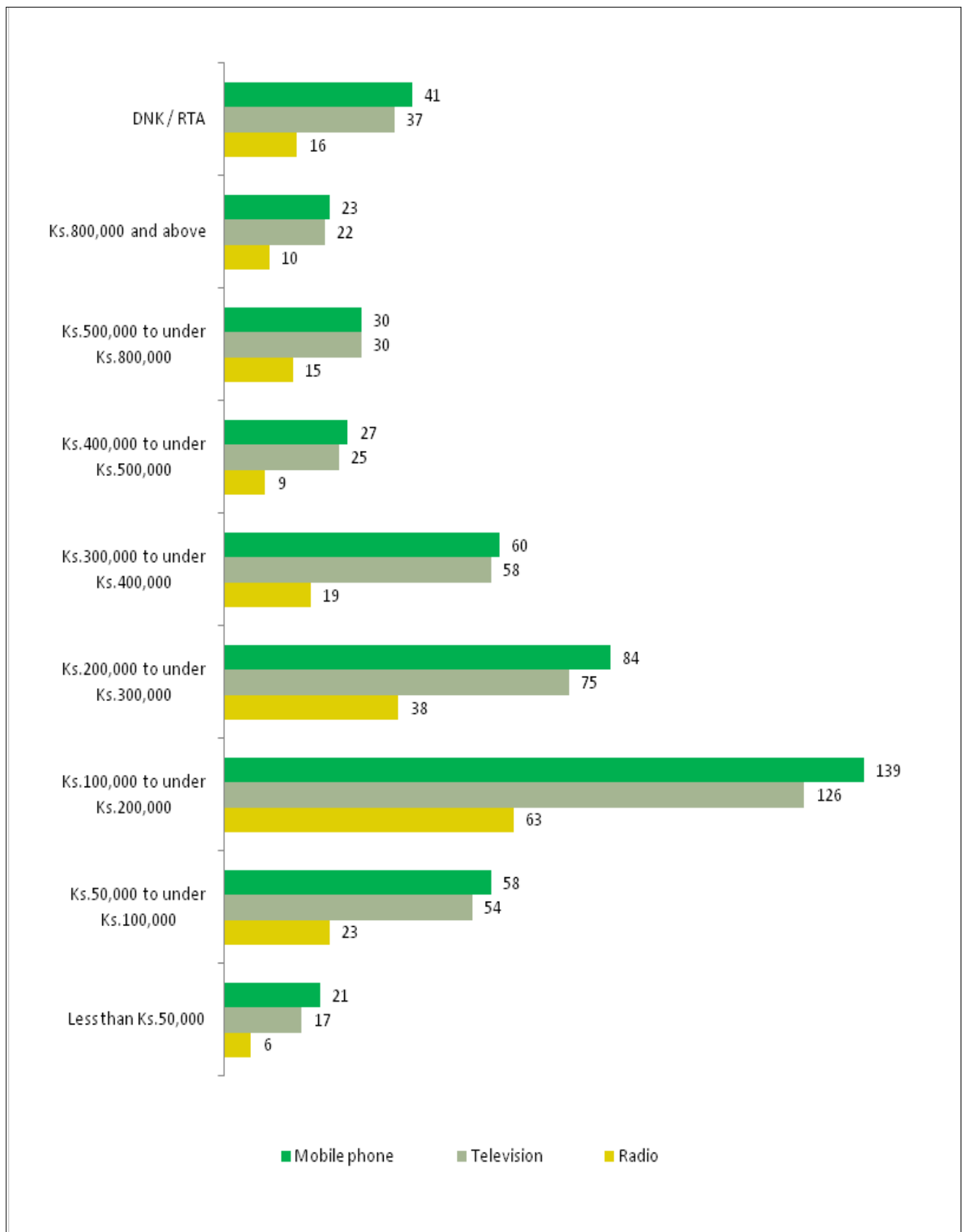


Figure 2.3(b) Access to Information by Sex

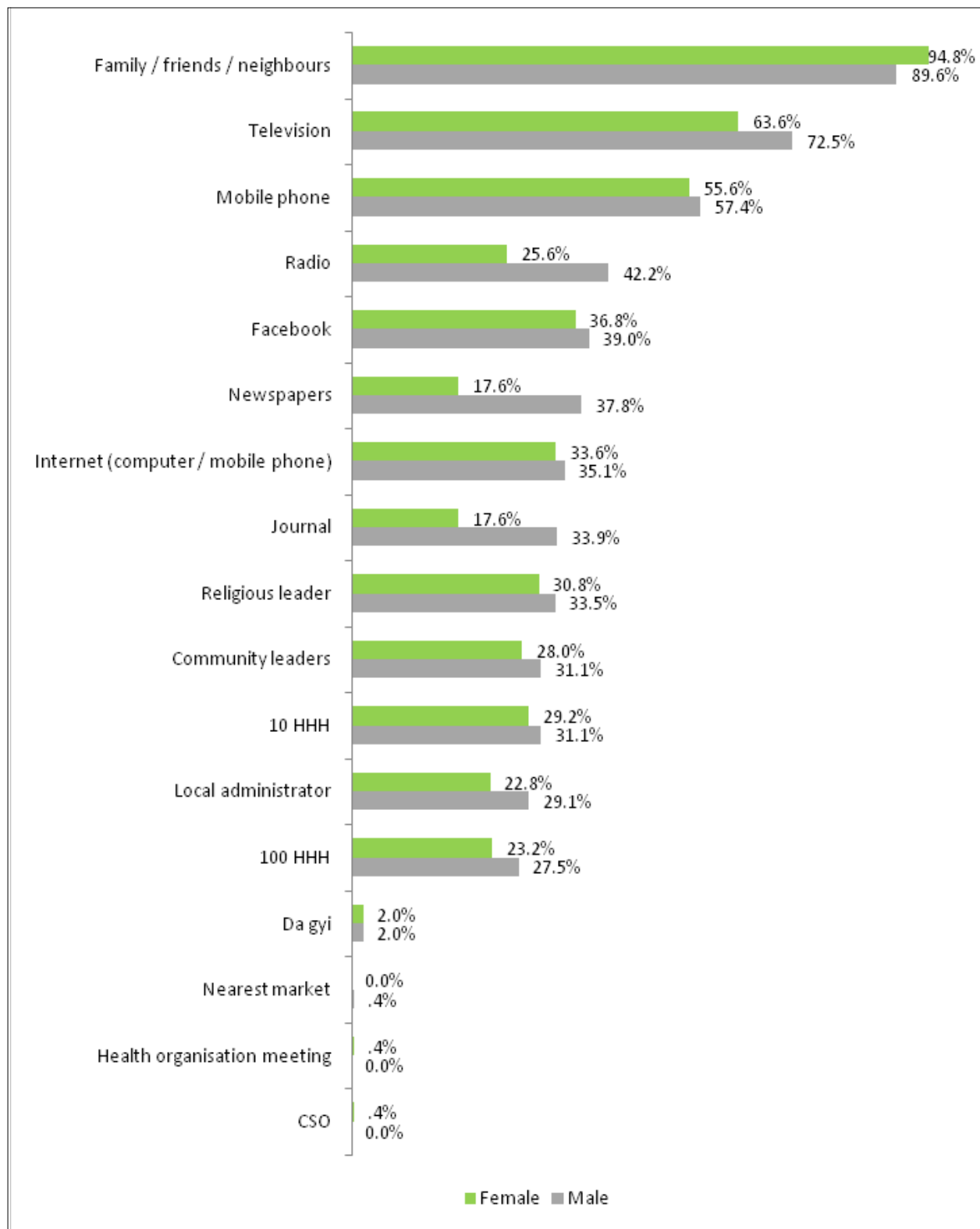
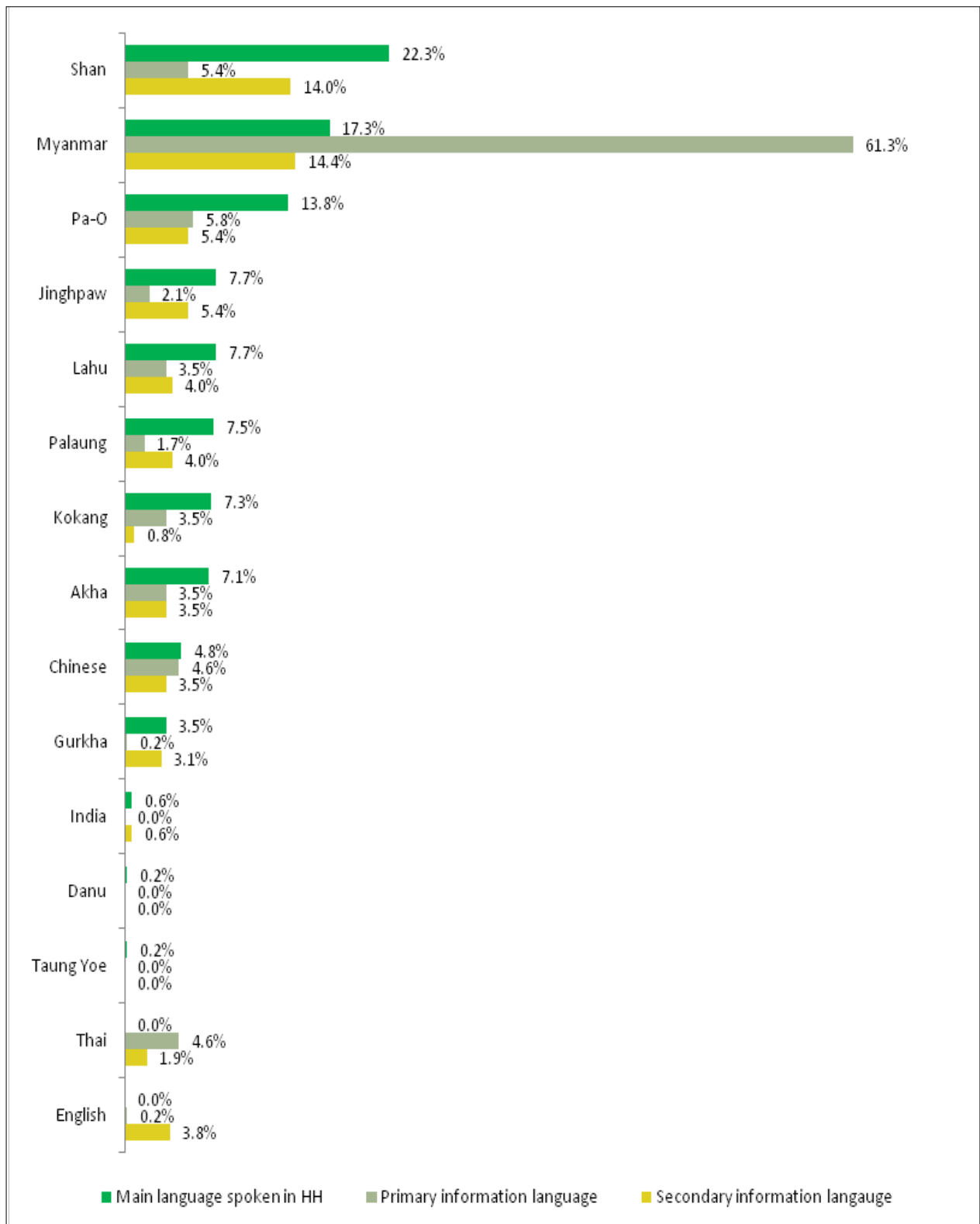


Figure 2.3(c) Languages



CHAPTER 3: FINDINGS – PERCEPTIONS OF JUSTICE AND LAW

Figure 3.1(a) Social Trust 'A' by Sex

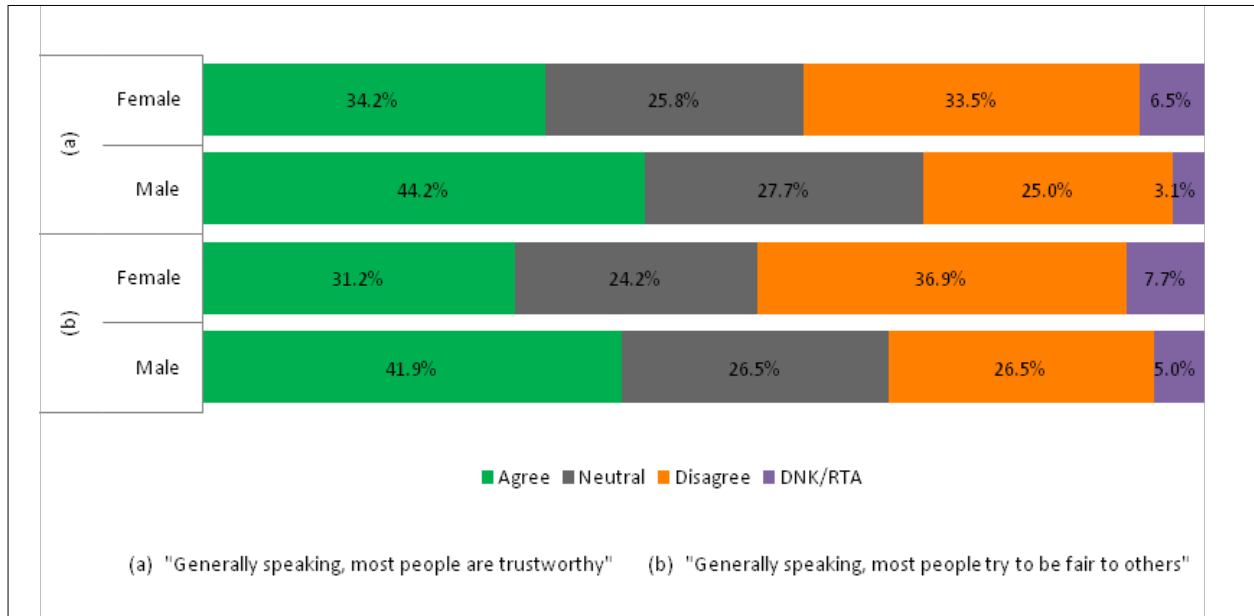


Figure 3.2(a) Social Trust 'B' by Sex

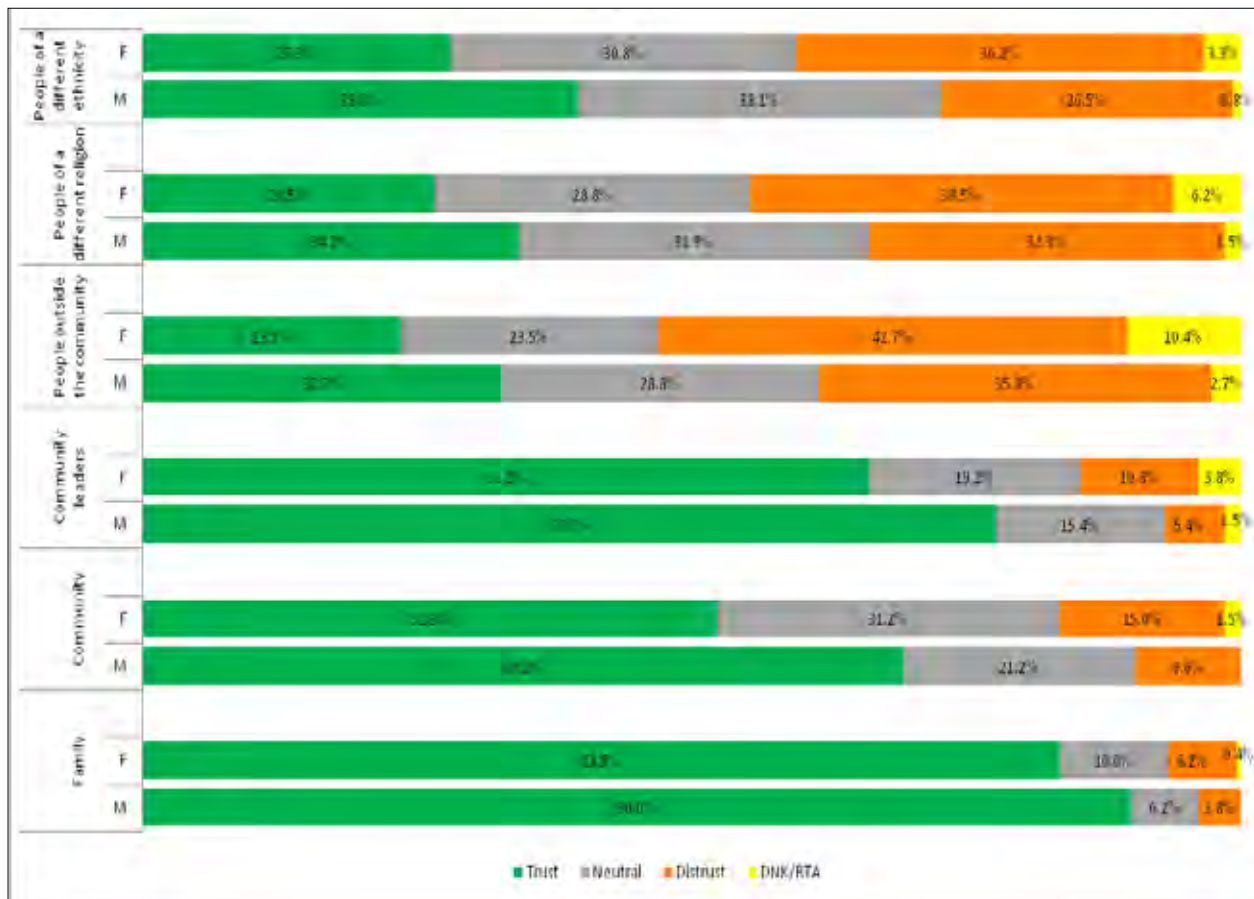


Table 3.1(a) Perceptions of Justice by Sex

| | | M | F |
|--------------------------------|--|--------------|--------------|
| FORMAL VS. INFORMAL | (a) Some disputes are best settled in the Courts. | 11.2% | 10.4% |
| | (b) It is better for most disputes to be settled within the community. | 71.9% | 74.2% |
| EQUALITY | (a) Every person deserves equal care and concern by the government regardless of religion or ethnicity. | 81.2% | 81.5% |
| | (b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups. | 14.2% | 10.8% |
| FATE VS. REMEDY | (a) Injustices can befall people, and there is nothing they can do about it because it is their fate. | 11.9% | 16.2% |
| | (b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome. | 85.0% | 78.1% |
| 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. | 48.1% | 48.5% |
| | (b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others. | 41.9% | 36.9% |
| TRANSITIONAL JUSTICE | (a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar. | 51.5% | 50.8% |
| | (b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar. | 39.2% | 35.8% |
| PROCESS VS. OUTCOME | (a) Being fairly treated throughout a process is more important than obtaining a favourable outcome. | 90.8% | 88.8% |
| | (b) Obtaining a favourable outcome is more important than being treated fairly during a process. | 5.4% | 4.6% |
| GENDER | (a) Men and women have equal value, but women have greater responsibility to care about culture and tradition. | 6.2% | 6.2% |
| | (b) Men and women have equal value, and both have equal responsibility to care about culture and tradition. | 91.9% | 92.3% |
| INDIVIDUAL VS. COMMUNITY | (a) Individual rights must be as respected as communal harmony. | 56.9% | 54.2% |
| | (b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised. | 39.6% | 38.1% |

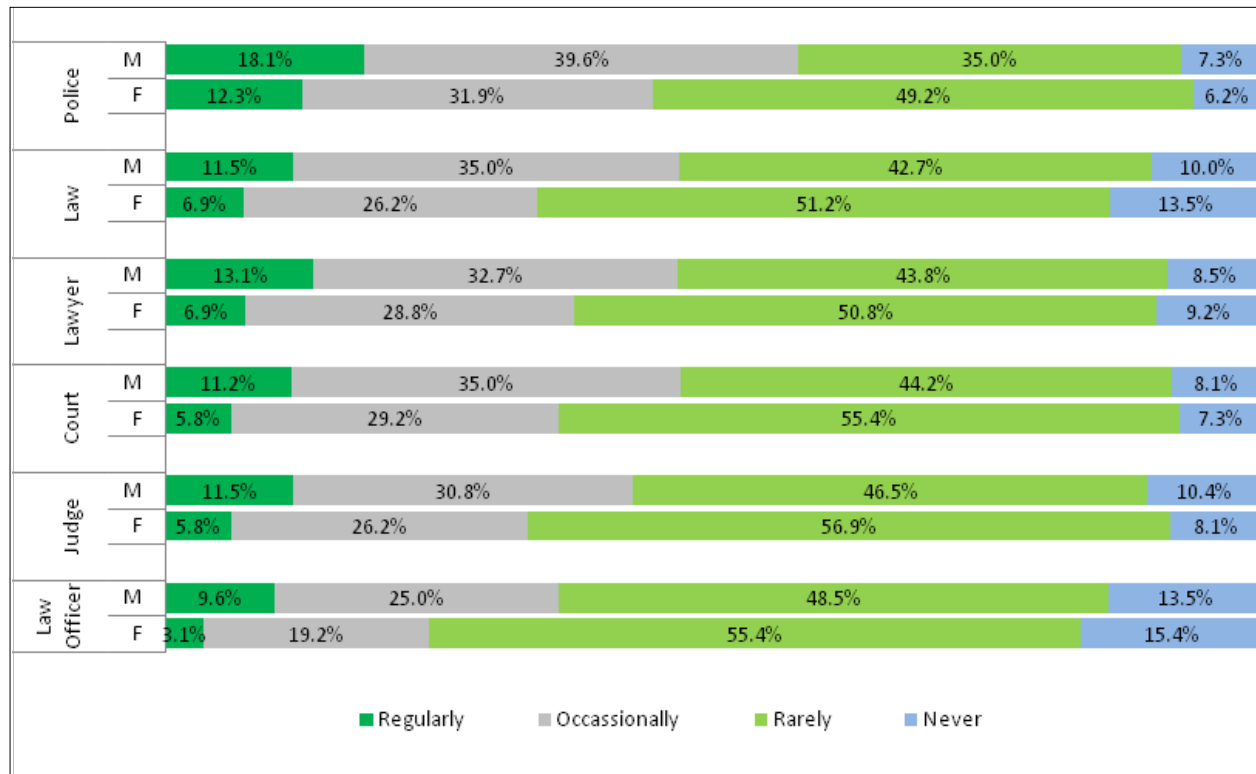
Table 3.1(b) Perceptions of Justice by Urban/Rural Locations

| | | U | R |
|--------------------------|--|--------------|--------------|
| FORMAL VS. INFORMAL | (a) Some disputes are best settled in the Courts. | 11.4% | 9.9% |
| | (b) It is better for most disputes to be settled within the community. | 71.8% | 74.8% |
| EQUALITY | (a) Every person deserves equal care and concern by the government regardless of religion or ethnicity. | 83.9% | 77.9% |
| | (b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups. | 12.1% | 13.1% |
| FATE VS. REMEDY | (a) Injustices can befall people, and there is nothing they can do about it because it is their fate. | 13.4% | 14.9% |
| | (b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome. | 82.6% | 80.2% |
| 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. | 51.0% | 44.6% |
| | (b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others. | 36.2% | 43.7% |
| TRANSITIONAL JUSTICE | (a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar. | 50.7% | 51.8% |
| | (b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar. | 39.3% | 35.1% |
| PROCESS VS. OUTCOME | (a) Being fairly treated throughout a process is more important than obtaining a favourable outcome. | 90.9% | 88.3% |
| | (b) Obtaining a favourable outcome is more important than being treated fairly during a process. | 3.0% | 7.7% |
| GENDER | (a) Men and women have equal value, but women have greater responsibility to care about culture and tradition. | 4.7% | 8.1% |
| | (b) Men and women have equal value, and both have equal responsibility to care about culture and tradition. | 93.6% | 90.1% |
| INDIVIDUAL VS. COMMUNITY | (a) Individual rights must be as respected as communal harmony. | 53.7% | 58.1% |
| | (b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised. | 40.9% | 36.0% |

Table 3.1(c) Perceptions of Justice by Religion

| | | B | C |
|--------------------------|--|-------|-------|
| FORMAL VS. INFORMAL | (a) Some disputes are best settled in the Courts. | 11.9% | 7.4% |
| | (b) It is better for most disputes to be settled within the community. | 73.5% | 73.1% |
| EQUALITY | (a) Every person deserves equal care and concern by the government regardless of religion or ethnicity. | 80.0% | 85.2% |
| | (b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups. | 13.9% | 8.3% |
| FATE VS. REMEDY | (a) Injustices can befall people, and there is nothing they can do about it because it is their fate. | 16.1% | 6.5% |
| | (b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome. | 79.2% | 89.8% |
| 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. | 52.0% | 34.3% |
| | (b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others. | 35.9% | 51.9% |
| TRANSITIONAL JUSTICE | (a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar. | 53.0% | 43.5% |
| | (b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar. | 35.6% | 46.3% |
| PROCESS VS. OUTCOME | (a) Being fairly treated throughout a process is more important than obtaining a favourable outcome. | 88.9% | 93.5% |
| | (b) Obtaining a favourable outcome is more important than being treated fairly during a process. | 4.7% | 6.5% |
| GENDER | (a) Men and women have equal value, but women have greater responsibility to care about culture and tradition. | 7.7% | 0.9% |
| | (b) Men and women have equal value, and both have equal responsibility to care about culture and tradition. | 90.6% | 97.2% |
| INDIVIDUAL VS. COMMUNITY | (a) Individual rights must be as respected as communal harmony. | 54.2% | 61.1% |
| | (b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised. | 39.1% | 37.0% |

Figure 3.4(a) Words in Daily Conversation by Sex



CHAPTER 5: FINDINGS – DISPUTE SETTLEMENT TRAJECTORIES

Figure 5.2(a) Dispute Settlement Preferences – Hypothetical 1

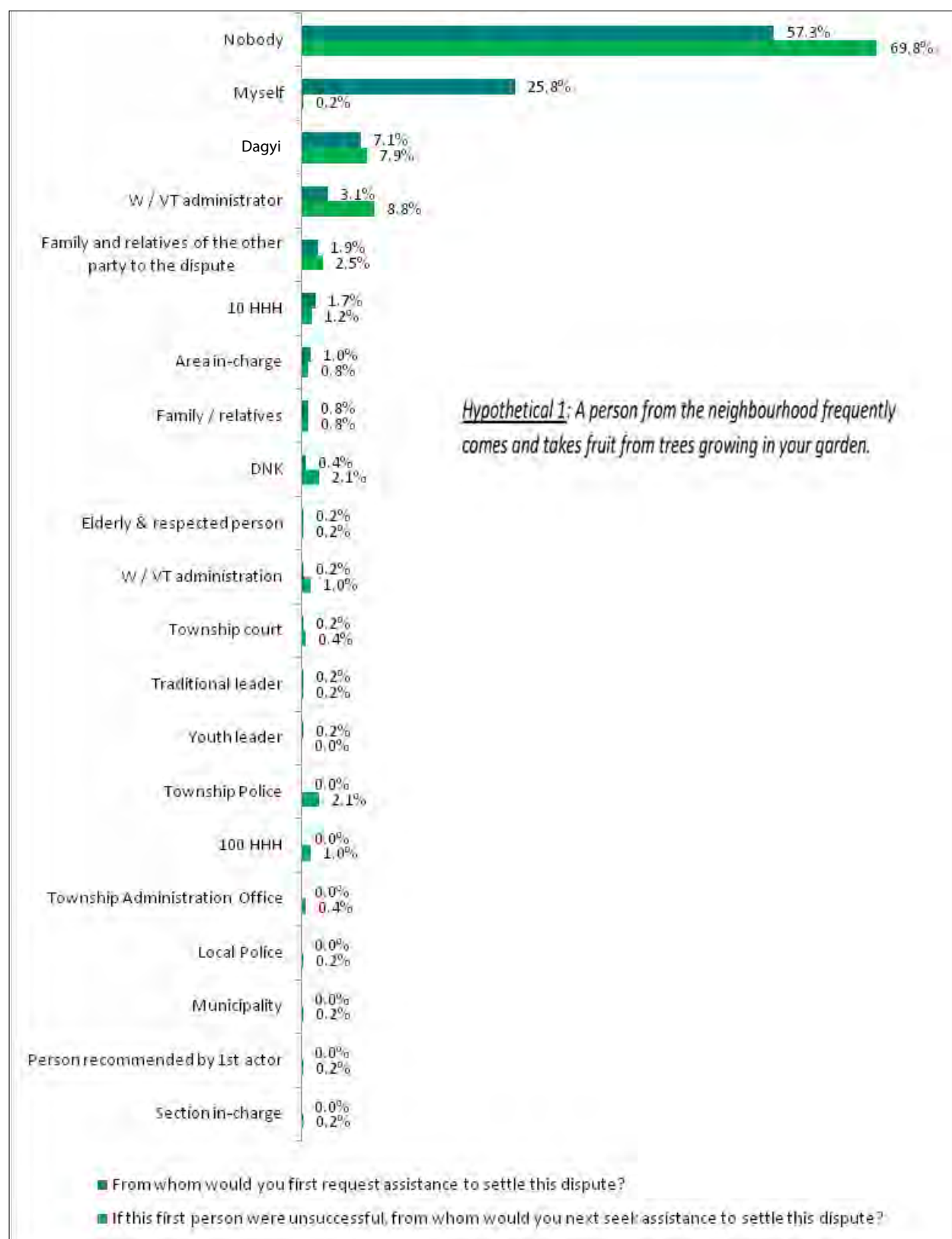


Figure 5.2(b) Dispute Settlement Preferences – Hypothetical 2

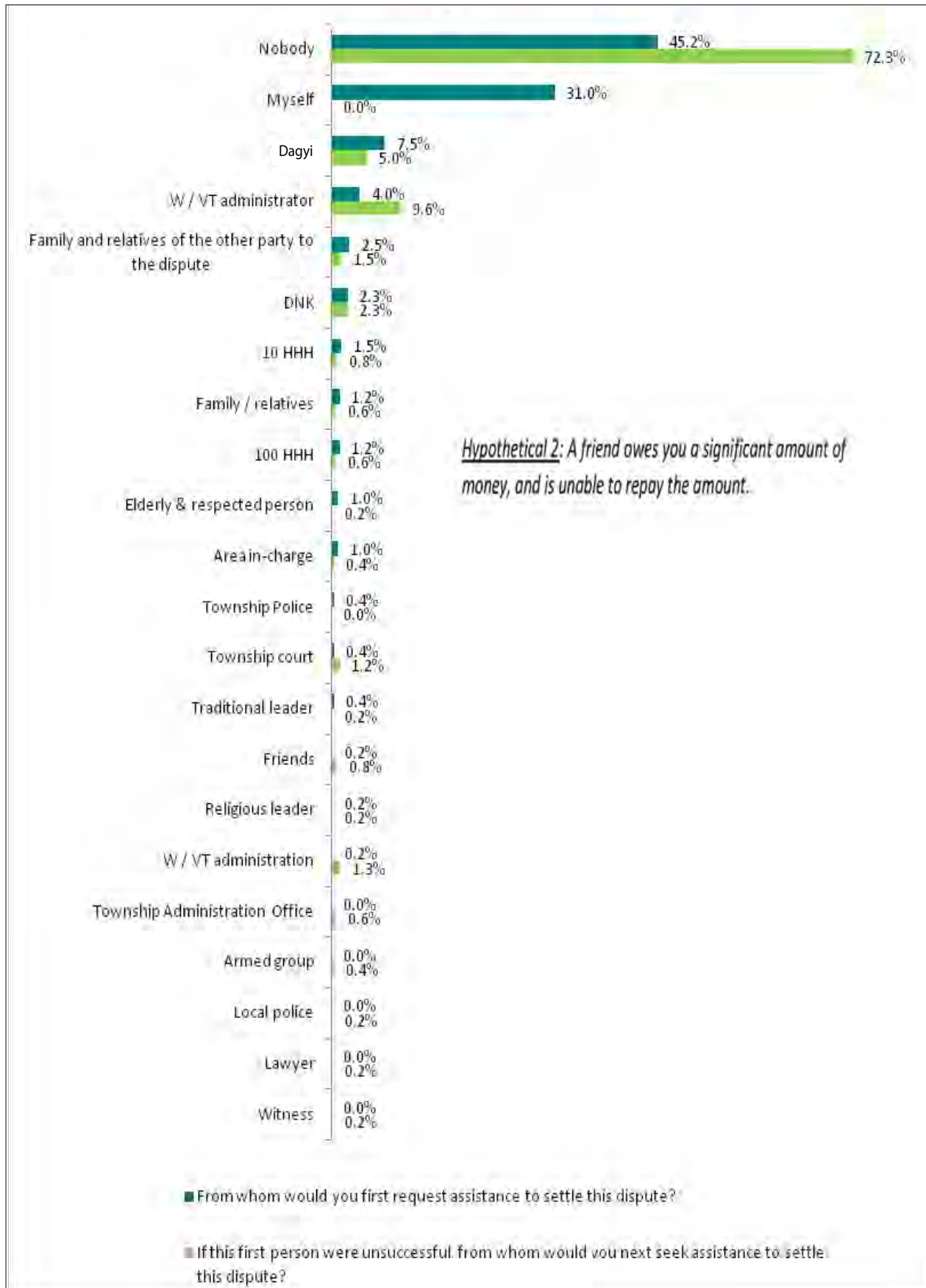


Figure 5.2(c) Dispute Settlement Preferences – Hypothetical 3

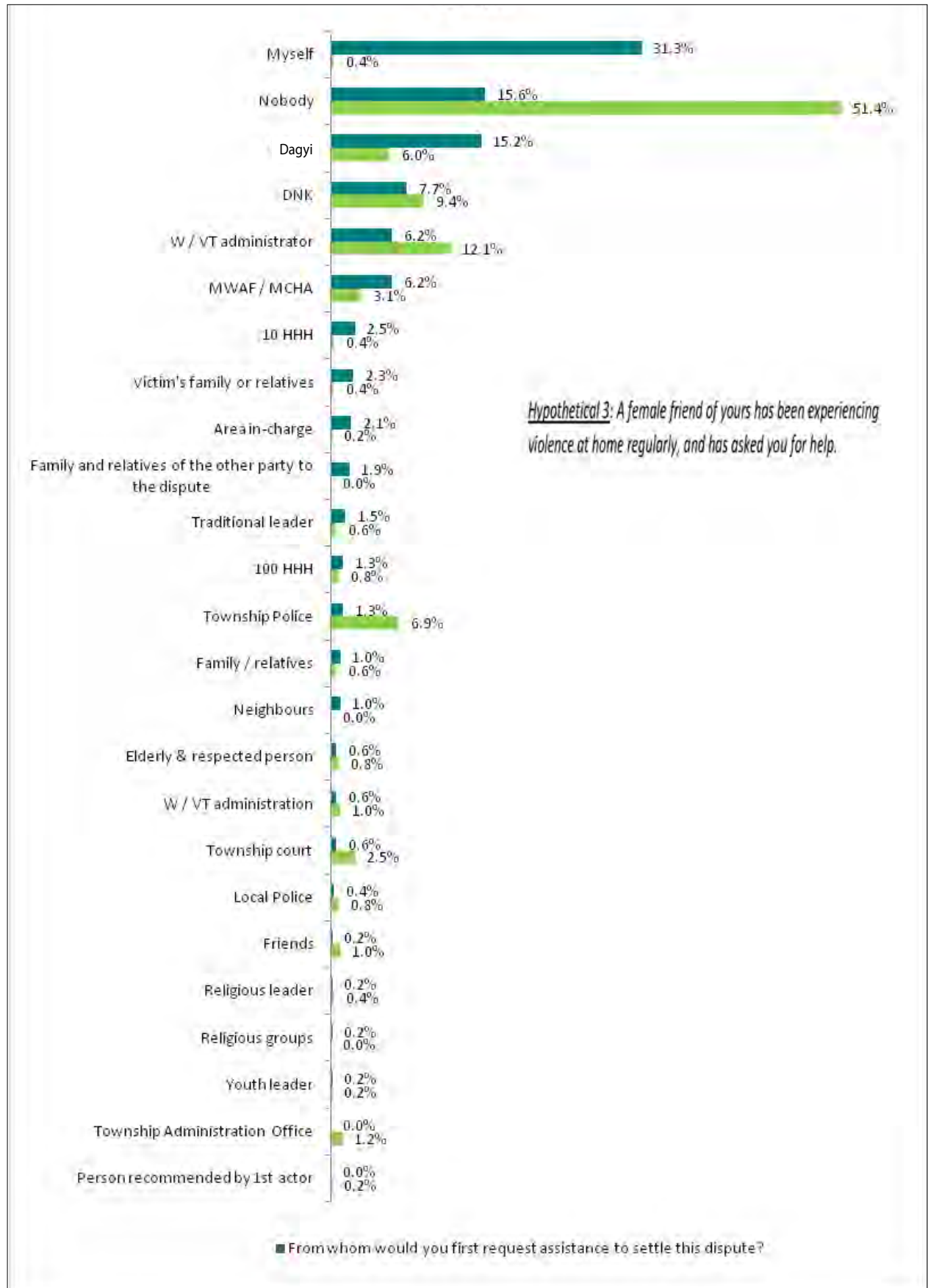


Figure 5.2(d) Dispute Settlement Preferences – Hypothetical 4

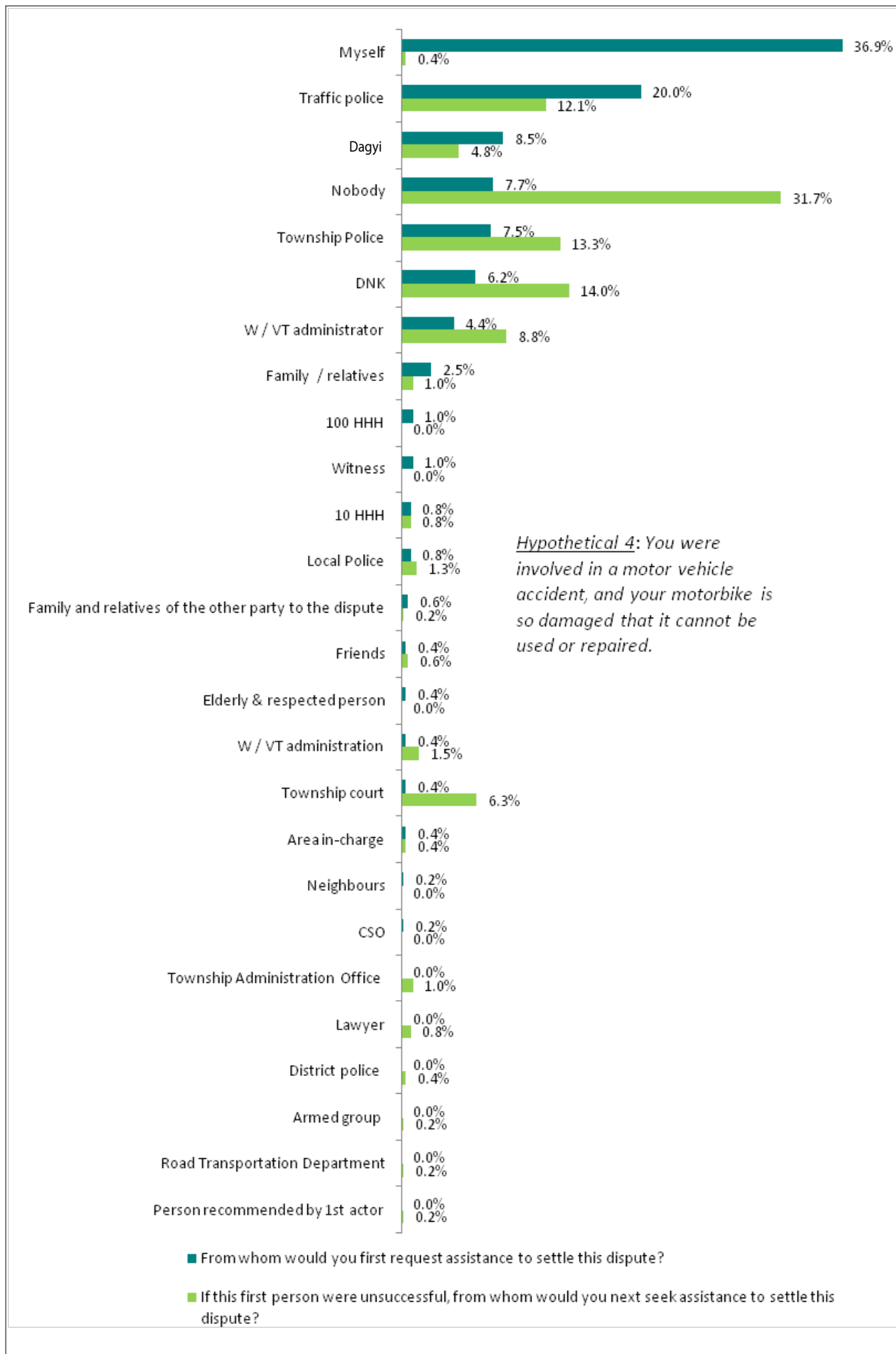


Figure 5.2(e) Dispute Settlement Preferences – Hypothetical 5

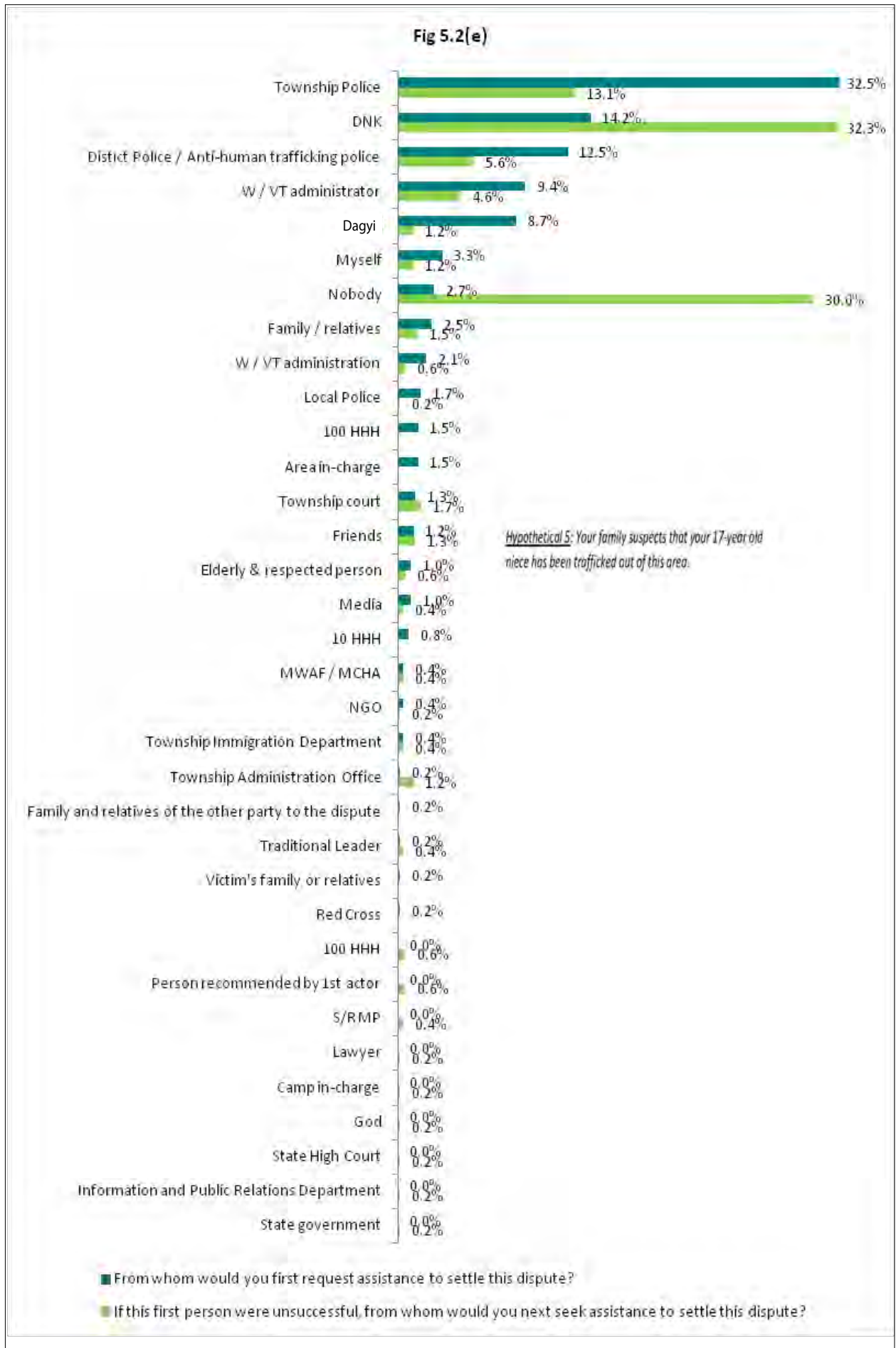
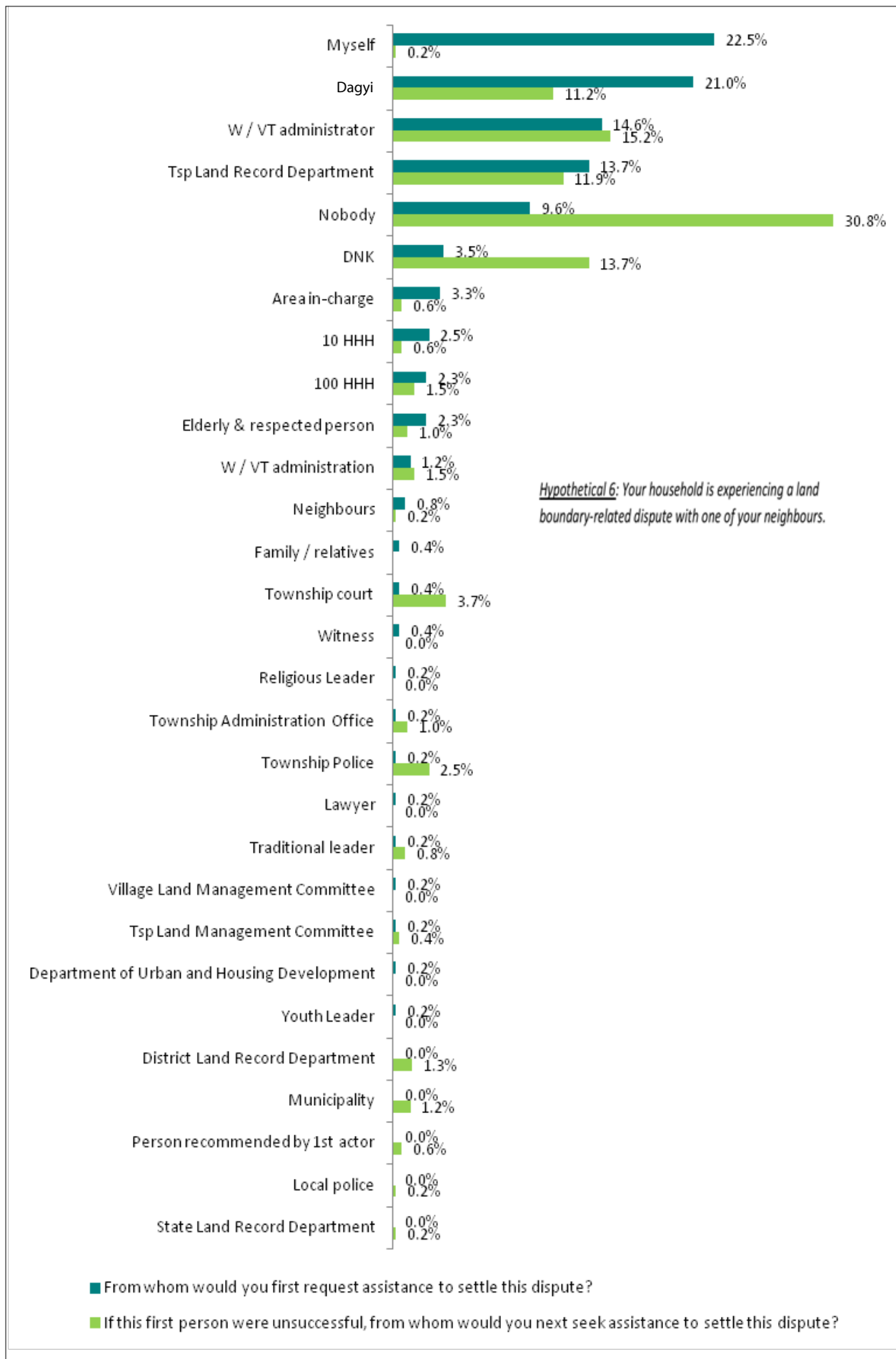


Figure 5.2(f) Dispute Settlement Preferences – Hypothetical 6



CHAPTER 6: PERCEPTIONS AND ATTITUDES TOWARDS JUSTICE SERVICES

Figure 6.6(a) Barriers against Accountability

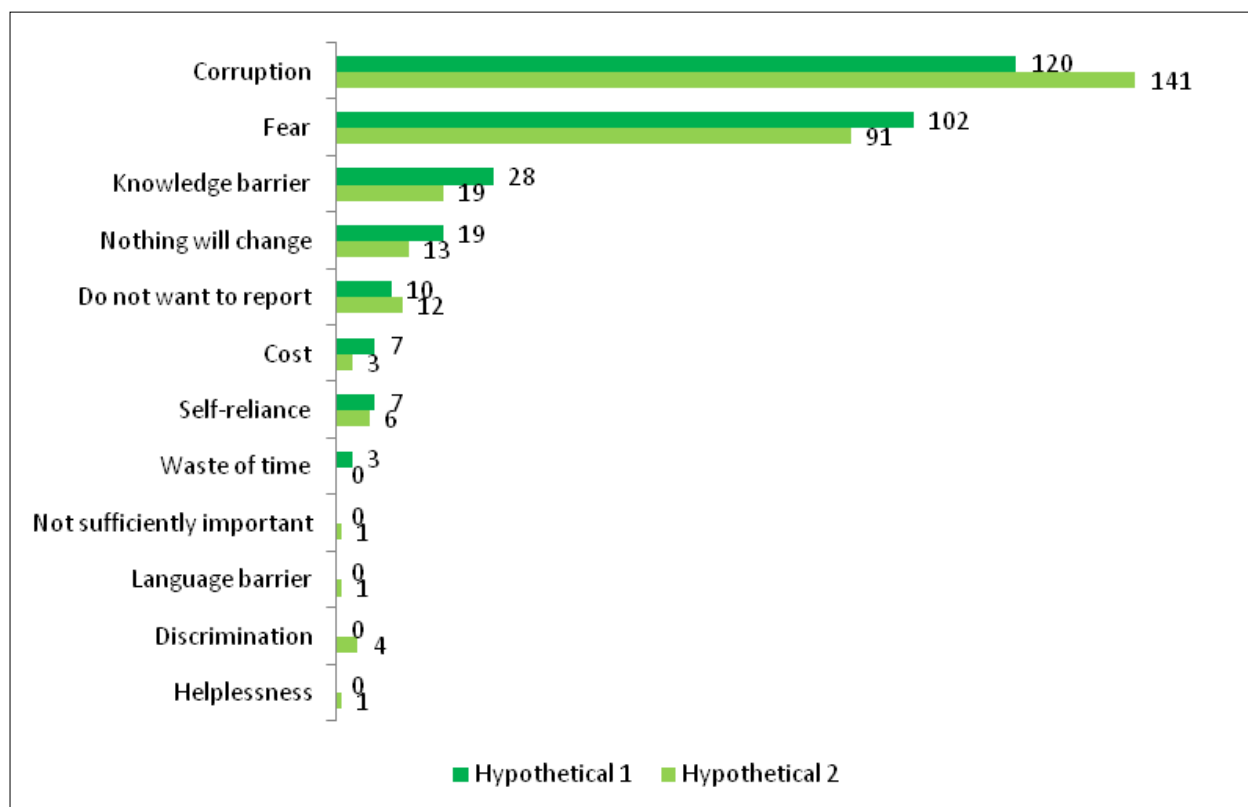


Figure 6.6(b) Attitudes on Accountability by Sex

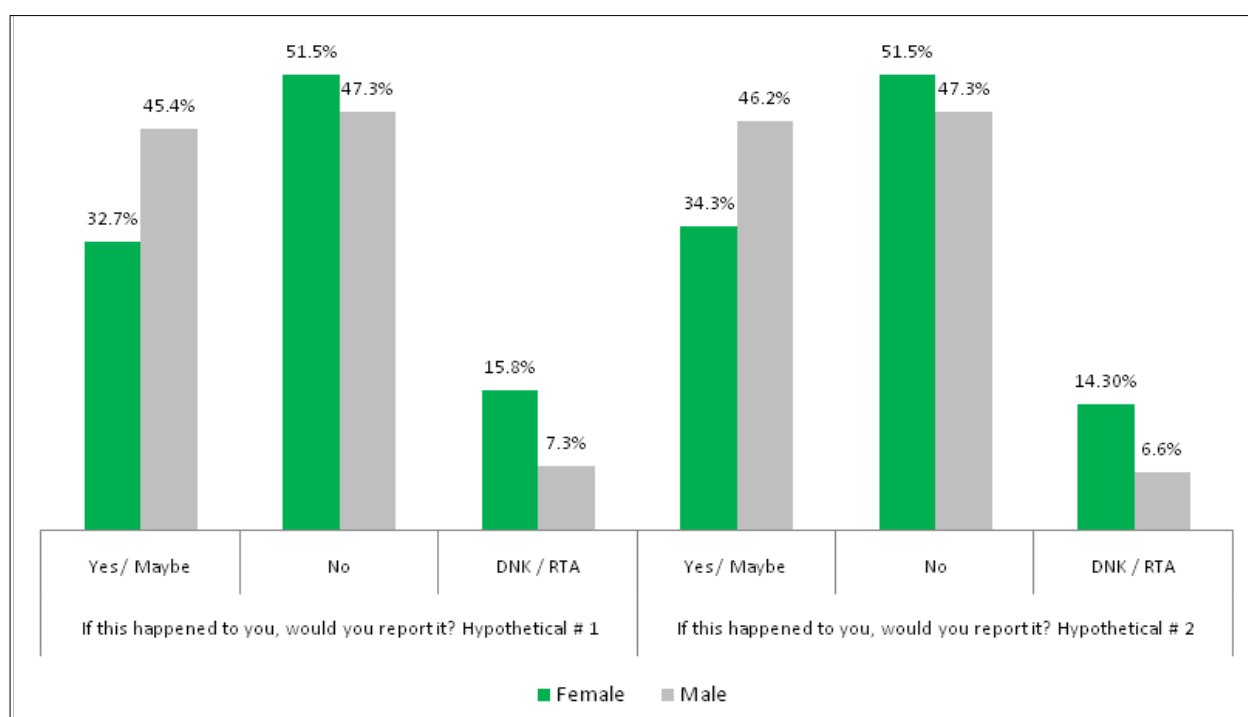


Table 6.3 Attitudes on Accountability by Ethnicity

| Ethnicity | TOTALS | If this happened to you, would you report it? | | | | | |
|---------------------|--------|---|-----|-----------|----------------|-----|-----------|
| | | Hypothetical 1 | | | Hypothetical 2 | | |
| | | Yes / Maybe | No | DNK / RTA | Yes / Maybe | No | DNK / RTA |
| Shan | (120) | 56 | 49 | 15 | 60 | 50 | 10 |
| Pa-O | (80) | 31 | 37 | 12 | 35 | 30 | 15 |
| Akha | (40) | 16 | 17 | 7 | 16 | 21 | 3 |
| Bamar | (40) | 16 | 22 | 2 | 21 | 17 | 2 |
| Chinese | (40) | 10 | 25 | 5 | 8 | 26 | 6 |
| Kachin | (40) | 14 | 23 | 3 | 16 | 20 | 4 |
| Kokang | (40) | 8 | 30 | 2 | 6 | 31 | 3 |
| Lahu | (40) | 21 | 13 | 6 | 15 | 18 | 7 |
| Ta'ang / Palaung | (40) | 11 | 25 | 4 | 21 | 16 | 3 |
| South Asian descent | (40) | 20 | 16 | 4 | 11 | 28 | 1 |
| TOTALS | 520 | 203 | 257 | 60 | 209 | 257 | 54 |

ANNEX III

KEY INSTITUTIONS AND PROCESSES IN THE CRIMINAL JUSTICE SYSTEM

MYANMAR POLICE FORCE

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.

Within a township, there is generally a town station in the most densely populated area, a couple of area stations in less densely populated areas and some police posts in remote areas. The number of stations (and posts) within a territorial boundary depends on the geographical area and population size. In Tachileik Township, for example, there are one town station, five area stations and two police posts. On the other hand, one town station, two area stations and two police posts cover the five townships of Lashio district.

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 (Figure A1).

CRIMINAL JUSTICE PROCESS

In the event that the police learn of an incident involving a cognizable offence,⁵⁴ 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.⁵⁵

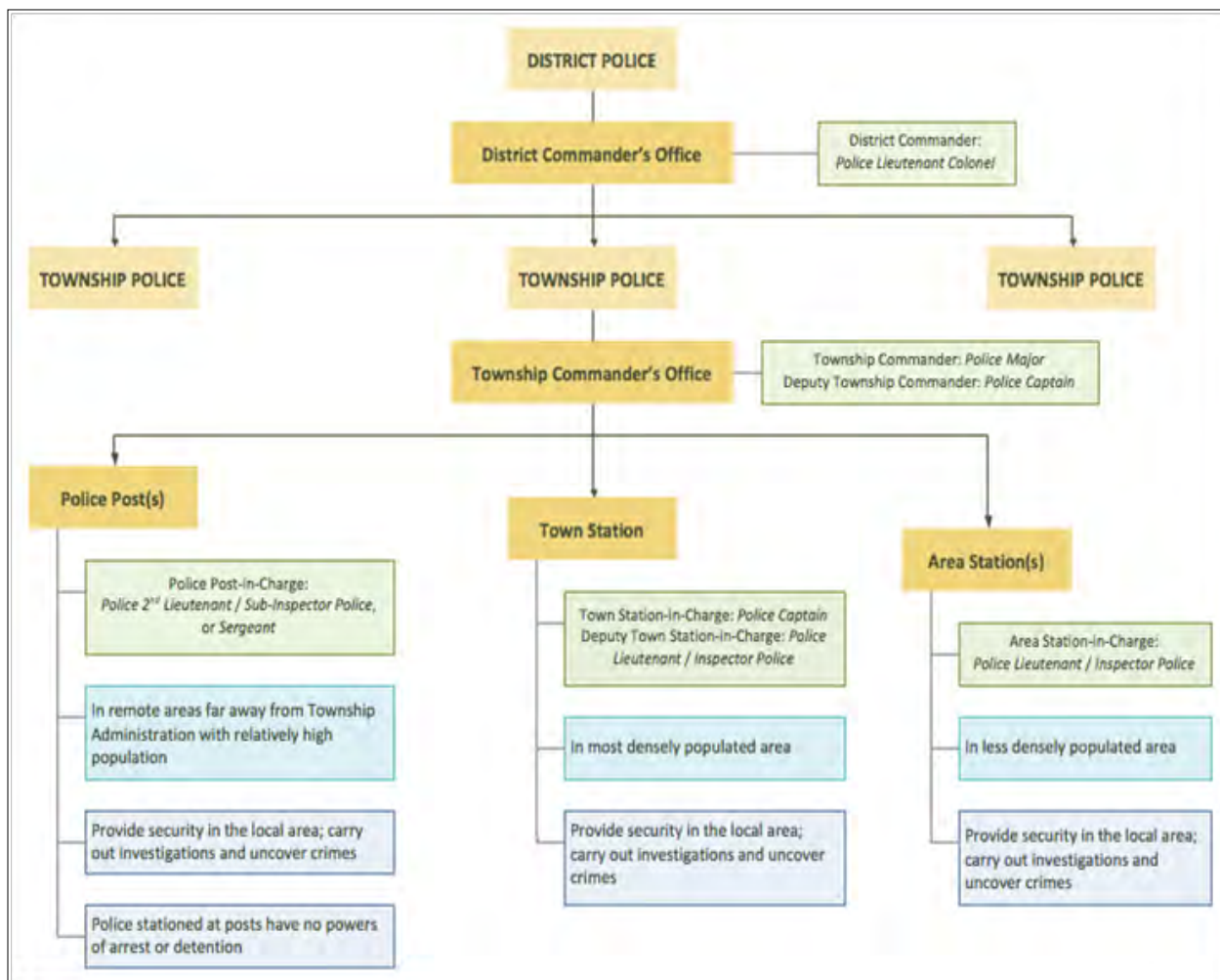
The filing of a FIR puts in motion the criminal justice system's response to the particular incident (Figure A2). Once started, the process cannot be stopped except through application by a law officer, and with the consent of the court.⁵⁶

54 1898 Code of Criminal Procedure, 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."

55 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."

56 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 ..."

Figure A1 MPF Policing Structure at Township Level



Once a FIR is filed, the police begin investigations into the incident,⁵⁷ which may include the arrest and/or remand of a suspect.⁵⁸ Police officers in Shan State explained that investigations are generally, though not necessarily, conducted by officers stationed where the FIR is lodged. Some noted that, 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.

Some police officers interviewed explained that, 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.

When the brief – including the relevant charges and supporting evidence – is in order, it is submitted to the Township Commander for initiation of proceedings at court.⁵⁹ If the alleged

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

58 As above, ss. 54 and 344.

59 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 it 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.”

60 As above, s. 177.

cognizable offence falls within the jurisdiction of the District Court (i.e., the offence attracts a sentence of more than seven years' imprisonment), the brief is submitted to the District Commander for initiation of proceedings. As a general rule, such judicial inquiry takes place within the district or township where the alleged offence occurred.⁶⁰

When a judge takes cognizance of an alleged offence, he/she is empowered to determine whether the matter is a warrant or summons case⁶¹ and whether it should proceed summarily.⁶²

After consideration of all the evidence (including examination and cross-examination of any witnesses) that may be produced for trial during the committal hearing,⁶³ the judge may (i) discharge the accused if he/she determines there to be insufficient grounds for committing the person for trial,⁶⁴ or (ii) commit the accused for trial (and formally frame charges against him/her in a warrant case).⁶⁵

During trial, the law officer acts on behalf of the State and conducts the prosecution. One judge noted that, 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.⁶⁶ The accused/defendant may or may not be represented by a lawyer, unless he/she is charged with an offence that is punish-

able 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. Figure A2 illustrates the primary features of this process.

61 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).

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

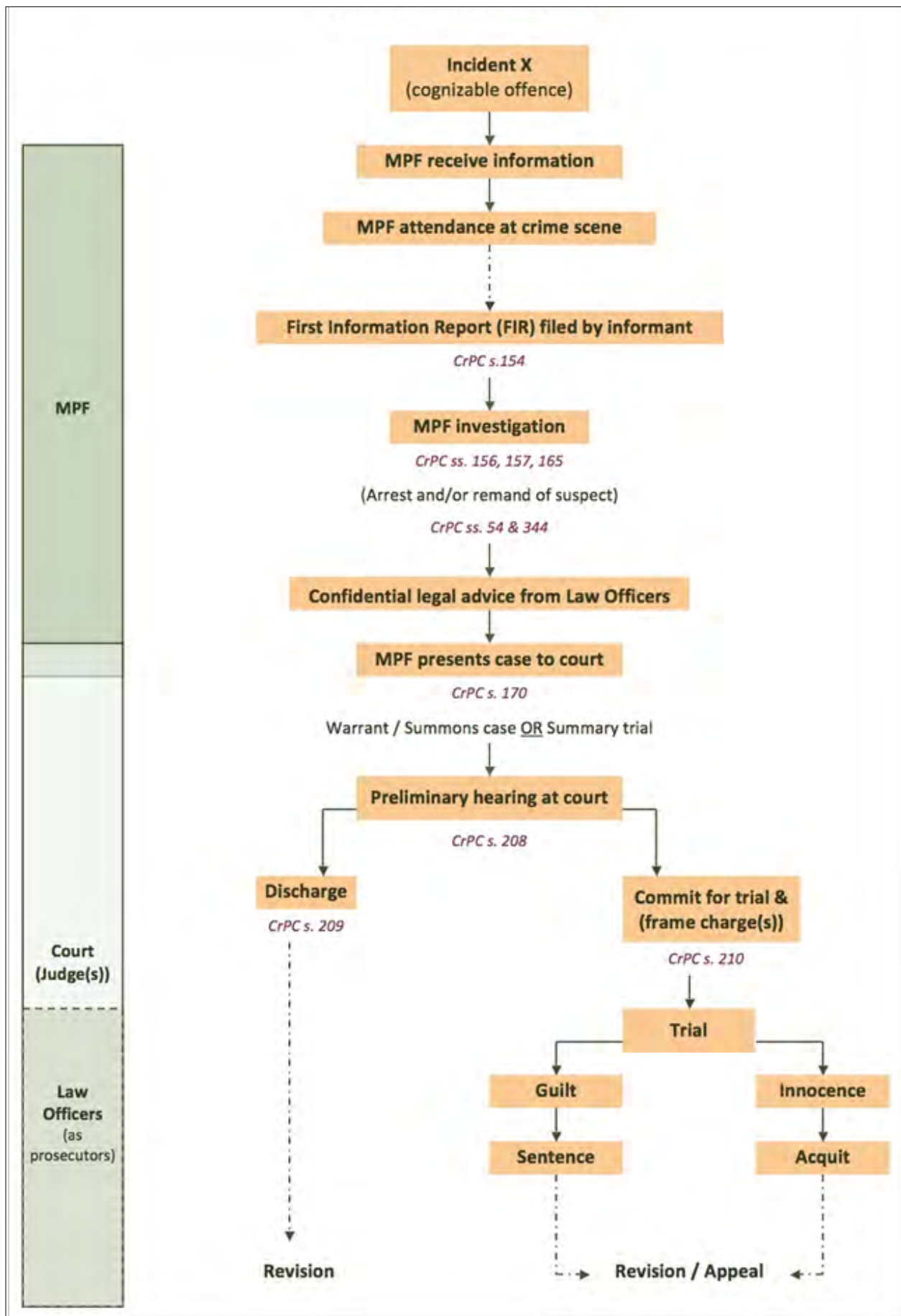
63 As above, s. 204.

64 As above, s. 209.

65 As above, s. 210.

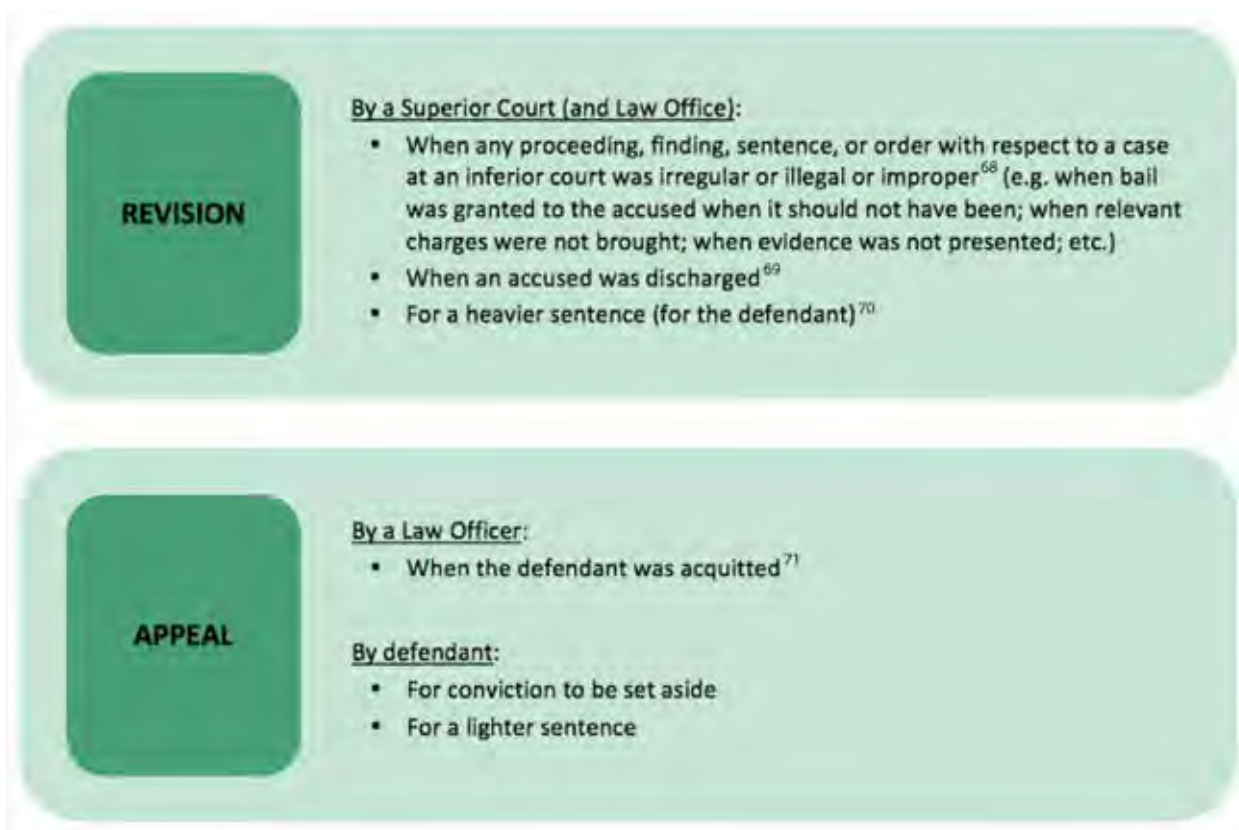
66 1872 Evidence Act, s. 101.

Figure A2 Criminal Justice Process



Cases may sometimes, however, be subject to revision or appeal.⁶⁷ Some judges and law officers described the main instances when this might be so (Figure A3).

Figure A3 Revisions and Appeals



67 CrPC, ss. 404 to 442.

68 As above, s. 435.

69 As above, s. 436.

70 As above, s. 439.

71 As above, s. 417.

GENERAL ADMINISTRATION DEPARTMENT

The GAD provides various public services at the township level, including acting as a One-Stop-Shop on matters concerning government (Chapter 5).⁷² 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 (Chapter 5). They also act as intermediaries between government departments and local community members.⁷³ 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. This last role would merit further research.

72 See also: UNDP Myanmar (2017), *Salt Between Split Beans – Access to Justice and Informal Justice Systems Research: Kachin State*.

73 See also: UNDP Myanmar (2017) *Ms. Aye Gets Hurt Twice – Access to Justice and Informal Justice Systems Research: Rakhine State*.




*Empowered lives.
Resilient nations.*

United Nations Development Programme
No.6, Natmauk Road, Tamwe Township
P.O. Box 650, Yangon 11211, Myanmar
Tel: (95 1) 542910 - 19, Fax: 95(1) 544 531

www.mm.undp.org

 UNDP Myanmar

 UNDP_Myanmar