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# MAKING BIG CASES SMALL & SMALL CASES DISAPPEAR

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EXPERIENCES OF  
LOCAL JUSTICE  
IN MYANMAR

LISA DENNEY,  
WILLIAM BENNETT  
& KHIN THET SAN



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Experience of Local Justice  
in Myanmar

Lisa Denney, William Bennett  
& Khin Thet San

November 2016

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Cover image: A woman sells watermelons from her roadside shop, November, 2016 © MyJustice.

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## ACRONYMS

ALR	Action Labor Rights
BGF	Border Guard Force
CBO	Community-Based Organisation
EMR	Enlightened Myanmar Research
EAO	Ethnic Armed Organisation
FGD	Focus Group Discussion
GAD	General Administration Department
IBAHRI	International Bar Association's Human Rights Institute
ICG	International Crisis Group
ICJ	International Commission of Jurists
KII	Key Informant Interview
KNU	Karen National Union
LGBT	Lesbian, Gay, Bisexual, Transgender
MAP	Making Access Possible
MLAW	Myanmar Legal Aid Network
MSM	Men Who Have Sex with Men
NGO	Non-Governmental Organisation
NLD	National League for Democracy
NMSP	New Mon State Party
UN	United Nations
UNCDF	UN Capital Development Fund
UNDP	UN Development Programme
USIP	United States Institute of Peace
VFW	Vacant, Fallow and Virgin Lands
W/VTA	Ward/Village Tract Administrator

# EXECUTIVE SUMMARY

*This report documents the lowest, and most used, levels of dispute resolution in communities in two parts of Myanmar – Mon State and Yangon Region. Drawing on interviews and focus group discussions with 600 people, it sets out the common disputes, crimes and injustices that people speak of experiencing, the ways people seek to resolve these issues and why, as well as an assessment of the quality of the justice they are able to achieve.*

**When asked about the purpose of justice, community members routinely said it was ‘to make big cases small and small cases disappear’.** This captures a common reality of local experiences of justice in Myanmar: that disputes or injustices are not reported, are downplayed or are resolved at the lowest level possible, often at the expense of wider substantive justice.

Such notions of extremely localised justice have been encouraged by decades of authoritarian rule, conflict and corruption that have prevented the building of trust in state institutions, including the justice sector. This combines with socio-religious norms that encourage people to deal with problems within themselves to pay off past life debts and ensure good karma. A lack of reporting, as well as a preference for resolving issues that are reported at the lowest level, result in an emphasis on maintaining peace and order over social disruption. Fair and non-discriminatory justice is thus sorely needed – and yet often not demanded.

This situation is particularly pernicious for groups commonly discriminated against, including the poor, women, ethnic and religious minorities and non-conforming genders. These groups face particular challenges in accessing justice.

## COMMON DISPUTES, CRIMES AND INJUSTICES

**Focus groups revealed a range of disputes, crimes and injustices.** Most common amongst these, particularly in Yangon, were debt disputes, resulting from informal lending at exorbitant interest rates that trap people into taking out additional loans to pay off existing ones.

Discrimination against women, the poor, religious and ethnic minorities and non-conforming genders is

widespread, which also puts them at a disadvantage in accessing fair and non-discriminatory justice. For religious minorities and poor unregistered migrants, discrimination often comes to a head around difficulties in obtaining national identity cards, without which it is difficult to exercise a range of rights.

Violence against women and children is widespread, with domestic violence particularly common – although rarely acknowledged by men. Abandonment was a common experience in parts of Mon State where men had left to find work overseas and cut off contact and support with their wives and children. Rape of minors was also spoken about in a large number of communities. Human trafficking was talked about in Mon State and mostly affected girls.

Land disputes are a common feature across Mon State and Yangon Region, relating to historic land grabs by the military and government, illegal sale of land by authorities or tenants, squatting by unregistered migrants, inheritance disputes and disputes amongst neighbours about land boundaries.

Labour disputes were a growing concern in industrial communities in Yangon Region, where the majority young female workforce complained of poor conditions and pay in the city’s factories. While labour unions are attempting to play a stronger role, they remain poorly understood.

The use and sale of drugs were seen as crimes, as well as a trigger for disputes within communities, especially in Mon State. Yet the perception was that only drug users are punished, with sellers avoiding justice.

Finally, a range of crimes and disputes related to public insecurity were spoken about across research sites, including murder, theft and robbery, youth fighting, motorcycle accidents and violations by the security sector.

## HOW PEOPLE RESOLVE DISPUTES

**A focus on how people resolve disputes and injustices should not distract from the fact that many people do not report such matters at all, preferring to internalise the problem and make peace with it.**

Where people do report, they rely on a plural set of justice facilitators and providers. The ways that people engage with these plural providers varies depending on location, identity, trust in providers and the nature of the dispute.

Justice facilitators are usually the first line of reporting for most people who seek third party resolution. Facilitators

include neighbours, 10 and 100 household heads, elders, community-based organisations, religious leaders, political party representatives and, in rare cases, astrologers and fortune tellers. These facilitators listen, provide advice and can act as a link to justice providers. In many cases, disputes (particularly those involving women or religious minorities) do not proceed further. If the facilitator deems the matter serious they may encourage complaint to a justice provider.

At the justice provider level, most cases only go as far as the Ward/Village Tract Administrator (W/VTA). W/VTAs describe using a combination of Union Law and custom or village law to resolve disputes. They routinely mediate in an attempt to find a swift resolution, ideally by compromise.

Where a W/VTA is not able to resolve a dispute, or where the parties are not satisfied with the W/VTA's decision, matters can be referred to the police and court system, or to the courts of ethnic armed organisations (EAOs). These justice providers are rarely used by women in particular. It is widely perceived that the costs involved in the formal justice system are prohibitive for most citizens.

Although higher-level justice providers do exist, they are very rarely used and in some cases are not known about. Notably, there are no clear justice chains or redress mechanisms available for those suffering discrimination.

## HOW PEOPLE MAKE DECISIONS ABOUT WHERE TO REPORT

**A strong reliance on custom means people tend to follow known procedures and the steps expected of them – even where they do not trust those involved in the justice chain.** The nature and severity of a dispute can also influence where people go to report a matter. In addition, shared identity with justice providers (such as W/VTAs and EAO courts), as well as perceived effectiveness and ability to make a binding decision were among the strongest drivers of justice-seeking behaviour. After this, a geographic, financial, linguistic and cultural accessibility issues influenced decisions.

The only people who appear to factor issues of fairness into their decision-making are groups that are discriminated against: religious minorities, women, non-conforming genders and sex workers. Because these groups perceive all justice avenues to be unfair, they tend not to report at all.

## IMPEDIMENTS TO FAIR AND NON-DISCRIMINATORY JUSTICE

**Unfair and discriminatory outcomes are often attributable to the inconsistent and discriminatory processes that precede them.** Local understandings of justice, as well as a preference for resolving cases at the lowest level, play a part in delivering unfair and discriminatory outcomes. Because justice is often equated with the disappearance of a problem, with people accepting whatever path that leads to closure most quickly, outcomes can fall short of protecting rights and being fair and non-discriminatory.

Similarly, a lack of clarity regarding the functions, jurisdictions and decision-making processes of different justice providers can lead to arbitrary justice outcomes. W/VTAs receive limited training and make decisions that are often more in accordance with their administrative function under the General Administration Department, rather in the interests of rights protection, fairness and non-discriminatory justice. Police are also said to mediate disputes that should be investigated and prosecuted.

Finally, corruption means justice outcomes can be bought at all stages. It is difficult to imagine how justice can be (and can be seen to be) fair and non-discriminatory when this is the case.

## RECOMMENDATIONS

**Ongoing political contests in Myanmar and competing sources of power mean that who, and what, donors support in justice reform will have deeply political ramifications.** External actors should be conscious of not defaulting to a state-building approach, which is especially sensitive in Myanmar. There is also a need to be realistic about what externally led programmes can achieve.

It is important that programmes do not rely on standard interventions, without interrogating whether they are actually likely to be helpful in Myanmar. People have become adept at coping with the problems they face in a range of ways. It should not be assumed that justice problems can be resolved by establishing new processes or institutions that adhere to external ideas of justice.

More important is investing in understanding the complex and varied ways in which people already think about and resolve disputes. While legal literacy

is low, simply raising awareness about 'justice' and its importance could have negative effects: strengthening strongly 'law and order' approaches to justice, or ideas that justice is about making problems disappear. A better place to start would be to broker community conversations about what justice means and what role it can play in Myanmar's future. Working 'with the grain' of existing justice practices suggests that engagement with the W/VTAs cannot be avoided. It will similarly be important to work with the police and the EAO courts.

Assistance should focus on a strategic selection of key justice problems, and engage justice facilitators and providers through the lens of these problems. This focus offers increased potential for achieving tangible changes in a few key areas. Issues such as debt disputes, discrimination, violence against women and labour disputes appear to offer the best opportunities for engagement.

Finally, this research points to a range of areas that would benefit from further research and speaks to the fundamental importance of building greater knowledge of local understandings of justice and justice-seeking behaviour in Myanmar. This requires an ongoing process of learning, given variation across the country, as well as the state of flux that characterises many aspects of justice.

# INTRODUCTION

*When community members in Myanmar's Mon State and Yangon Region were asked about the purpose of justice, they routinely said it was 'to make big cases small and small cases disappear' (kyi de amu nge say, nge de amu papyauk say). This phrase captures a common reality of local experiences of justice in Myanmar: that disputes or injustices are not reported, are downplayed or are resolved at the lowest level possible, often at the expense of wider substantive justice.*

**Such notions of extremely localised justice have been encouraged by decades of authoritarian rule, conflict and corruption that have prevented the building of trust in state institutions, including the justice sector.** This combines with socio-religious norms that encourage people to deal with problems within themselves. A lack of reporting, as well as a preference for resolving issues that are reported at the lowest level, results in an emphasis on maintaining peace and order over the social disruption of raising problems of crimes, disputes or injustices. As a result, fair and non-discriminatory justice is sorely needed – and yet often not demanded. Discrimination against the poor, women, ethnic and religious minorities and non-conforming genders means these groups face particular challenges in accessing justice.

In this difficult context, this report aims to document the lowest, and most utilised, levels of dispute resolution in communities in two parts of Myanmar – Mon State and Yangon Region. Drawing on interviews and focus group discussions with 600 people, it sets out the common disputes (variously, depending on severity, *pyat tha nar*, *ah nyin pwar pu* or *patipakha*), crimes (*mu khin*) and injustices (*ma tayarmu*) that people speak of experiencing, the ways people seek to resolve these issues and why, as well as an assessment of the quality of the justice (*tayar mya tamu*) they are able to achieve. This report was commissioned by MyJustice, which is funded by the European Union and implemented by the British Council, to inform decisions about implementation activities and to offer wider recommendations to other actors working the sector. Recommendations are also made to inform MyJustice and with relevance for others working on issues of justice in Myanmar. The recommendations set out potential entry points but also point to the risks of defaulting to standard access to justice interventions that derive from a primarily state-building framework: unlike many of the contexts where justice reform features, Myanmar is not a state-building context.

It is a contested state setting in which negotiations about statehood, power and legitimacy continue to play out. Who and what donor programmes support in relation to justice reforms will have ramifications for local configurations of power. Recommendations for programming thus need to be considered in more depth than is possible within the scope of this report, with consideration of their conflict sensitivity and impacts on ongoing political negotiations, discriminated groups and political feasibility.

The report is structured as follows. Section 3 sets out the methods used in undertaking the research, the various meanings of justice and challenges posed in undertaking the research. Section 4 provides a brief overview of the context in Myanmar to foreground discussion. Section 5 elaborates the common disputes and injustices recounted to us by respondents, building on wider research. Section 6 establishes the avenues through which people seek to resolve disputes and injustices. Section 7 describes the reasons people choose certain avenues over others. Section 8 assesses the fairness and non-discriminatory nature of the justice avenues available. Finally, Section 9 sets out recommendations and potential ways forward for those seeking to improve access to justice for people in Myanmar.

What emerges from the research is the high level of perseverance many people display in enduring disputes or injustices and not reporting them. This is most evident among groups such as the poor, religious and ethnic minorities, women and migrants, who face widespread (and usually unrecognised) discrimination and feel unable to obtain better outcomes for themselves. Moreover, such groups rarely conceive of such discrimination as being an issue related to 'justice'. Lack of reporting also occurs because of distrust, and thus avoidance, of the formal justice system, given its weaknesses and Myanmar's political history. Moreover, it reflects prevailing socio-religious beliefs about how to deal with problems appropriately, which focus on individuals 'letting things be' to pay off past life debts and ensure good karma. People often spoke of the importance of maintaining social harmony. Unpacking this idea reveals a range of factors that contribute to its prioritisation.

Where people do report (meaning they inform someone about their problem and seek a remedy, which may range from a sensitive ear to a negotiated settlement or a criminal prosecution through formal justice providers), they have a strong preference for resolving disputes at

the lowest level possible. This reflects an avoidance of formality and the formal justice system, as well as efforts to ensure the least disruption to social harmony. People utilise a wide range of justice providers, underscoring the plurality of justice experiences in Myanmar. In deciding between providers to report to, the strongest considerations that emerged related to issues of custom, identity and perceived effectiveness, followed by factors such as timeliness, affordability and linguistic and geographic accessibility. Fair and non-discriminatory justice outcomes are impeded by the emphasis placed on the importance of social order, poor training of some justice providers, confusion over jurisdictional limits, an orientation towards administrative functions (rather than justice) in the case of the Administrators<sup>1</sup> and corruption. At the same time, people told us the winds of change were coming. Improvements are being seen in some areas and expectations are high. This represents both an opportunity for those seeking to improve justice in Myanmar and a potential danger, if expectations become frustrated if progress is not seen.

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1 In Myanmar, ward and village tract administrators (W/VTAs) are the lowest-level governance actor, responsible for tax collection, land registration and reporting on demographics (Kyi Pyar Chit Saw and Arnold, 2014: 34). They also play key dispute resolution functions. Since 2012, W/VTAs have been elected by limited franchise and report to township administrators, who are appointees of the military-controlled General Administration Department. There are 16,785 wards and village tracts across Myanmar, which are divided into 330 townships (Kyed et al., 2016: 1).

# 1. METHODS AND CHALLENGES OF UNDERTAKING RESEARCH

*This report uses qualitative methods to understand how people deal with disputes and injustices at the local level; the decision-making processes used by both those seeking and those providing justice;<sup>2</sup> and how fair and non-discriminatory outcomes achieved through available justice mechanisms are. The starting point for analysis is the people – or ‘end users’ – at the ward or village level, with the aim of building a bottom-up understanding of the disputes and injustices they face and their practices for dealing with these. This is in contrast to top-down assessments of the formal justice structures available (in theory) to citizens, and abstract, legalistic ideas about justice.*

**What becomes clear from this approach is the plural or hybrid avenues people draw on in dealing with problems.** Plurality and hybridity refer to the existence of a more complex reality than simply the formal legal institutions of the state (Albrecht et al., 2011). These concepts draw attention to the wider constellation of justice providers, with often multiple and overlapping identities and sources of legitimacy, as well as the multiplicity of legal orders and conceptions of justice (Tamanaha et al., 2013). To help structure this analysis we use justice chains (see Annex 1) to depict the multiple avenues people pursue in dealing with different disputes.

This is not to suggest people have myriad options available. Indeed, options for achieving non-discriminatory and rights-protecting justice are highly constrained. Rather, it is to note the complex and plural ways people seek to deal with the problems they confront. Our focus is on “law in practice” or “law in action”, rather than formal recorded law’ (Crouch and Lindsey, 2014: 4).

This should be of use in informing efforts to understand locally used dispute resolution processes, as a basis for

supporting ways to improve access to and provision of justice.

It should be noted at the outset that this research was a short-term study investigating a wide range of complex issues and interviewing a large number of people in a relatively short period of time with the intention of informing MyJustice. This short-term nature, of course, imposed limitations on the depth it was possible to achieve. Findings must therefore be considered as a first step in a longer and deeper investigation of these issues in Myanmar by MyJustice and others, involving longitudinal research and ongoing learning.

Research was undertaken in three phases. First, existing academic and grey literature on justice in Myanmar was reviewed, to understand the wider context. Primary research was then undertaken in two phases, with two weeks in Mon State in June 2016 and two weeks in Yangon in August. In-country research was led by two international researchers (from the Overseas Development Institute and Saferworld London) and one Myanmar national (from Saferworld Myanmar). Given the challenges of gaining access to communities, it was necessary to work with community-based organisations (CBOs),<sup>3</sup> which worked alongside the researchers facilitating community access, introductions and translation and occasionally leading interviews. Finally, a Myanmar national was contracted for the Yangon research to assist with leading interviews and translation across the three townships visited.

Local researchers attended a one-day training at the outset of the research. This covered an introduction to MyJustice and the research, including key concepts, use of justice chains, research ethics, site selection and who to approach for focus group discussions (FGDs) and key informant interviews (KIIs). Local researchers collaboratively translated the interview guide into Myanmar language, ensuring all local researchers had the same master set of questions necessary to produce consistent data (with translation into Mon then easier when necessary) (see Annex 2). Local researchers then conducted practice interviews to familiarise themselves with the process and clarify misunderstandings.

Research sites within Mon State and Yangon were selected to capture geographic and demographic

<sup>2</sup> Longer-term research would enable this to be substantiated with observation of real-time cases as well as reviews of case registers.

<sup>3</sup> In Mon State, four local researchers were contracted through Jeppayah Civil Society Development Organisation in Mawlamyine and four through the Mon Area Development Organisation in Ye. In Yangon, two were contracted through Ah May Arr Man Free Education Network in Dala and two through Phoenix Association in Hlaing Thar Yar and Shwepyithar.

**Table 1:**

Wards/village tracts visited

STATE/REGION	TOWNSHIP	WARD/VILLAGE TRACT
<p><b>MON STATE</b></p> 	Mawlamyine	Mying Thar Yar (urban)
		Thiri Mying (urban)
		Ka Toe
		Kawt Hnut
		Min Ywar
	Ye	Yan Myo Aung (urban)
		Aung Minglar (urban)
		Yin Yei
		Kyaung Ywar
		Du Yar
		An Din
<p><b>YANGON REGION</b></p> 	Dala	Danode
		Thabyay Gone
		11-14 Ward
		Myo Ma4 Ward
	Shwepyithar	Ward 16
		Ward 19
		Ward 20
	Hlaing Thar Yar	Ward 8
		Ward 12
		A Lae Gone
		Shwe Linpan

diversity, balanced against time limitations and ability to gain access. Table 1 shows the communities visited: 24 wards/village tracts (12 in Mon; 12 in Yangon) across two townships in Mon and three in Yangon. The selection includes rural and urban areas, industrial and farming communities, ethnically homogenous and heterogeneous communities, remote areas, areas with mixed authority and communities known for having high levels of vulnerability and migrant labour.

Separate male and female FGDs were held in each community, with five to 19 participants aged 17–80. FGD participants were variously selected by CBO partners, ward or village tract administrators (W/VTAs) and monasteries, with FGDs held in W/VTA offices, monasteries, community halls or the houses of community members.

The selection and location of the FGDs, of course, affect the research findings. We attempted to offset potential bias by ensuring a spread of locations. In addition, W/VTAs were not present during FGDs or interviews, although in one community the WA refused to leave. It is also important to note that all research took place in majority Buddhist communities; as such, their views dominate the FGDs and the interpretations of people's justice-seeking practices that emerged from these. To capture alternative views, FGDs were supplemented with interviews with a range of respondents, including religious minorities who could not easily speak up in FGDs dominated by Buddhists.

Interviews were held with W/VTAs, 10 and 100 household heads,<sup>4</sup> elders, CBOs (including women's groups), religious leaders from Buddhist, Muslim, Hindu and Christian communities, ethnic and religious minorities, vulnerable groups such as sex workers and men who have sex with men (MSM)<sup>5</sup> and individuals with experience of a dispute. We also conducted a limited number of interviews with representatives of the formal justice sector (retired judges, law officers and police officers)<sup>6</sup> and researchers and those from national

and international organisations working on justice in Myanmar (see Annex 3 for a full list of FGDs and interviewees). In total, 47 FGDs and 90 interviews were conducted, with 600 people consulted.<sup>7</sup>

## UNDERSTANDINGS OF JUSTICE

In order to be able to document local experiences of justice in Myanmar, it is necessary to understand local articulations of justice. What constitute legitimate processes and outcomes of justice vary, with no single coherent narrative. We heard a range of meanings attributed to justice, including:

- **Justice is** when there is a dispute that is resolved with both sides agreeing.
- **Justice is** about being at peace with yourself.
- **Justice is** when the WA mediates and resolves an issue without bias, including punishment to fit a crime.
- **Justice is** when there is a fair hearing of all parties.
- **Justice is** the absence of bribery.

For the purposes of this report, we look at both justice processes and outcomes. The processes relate to how justice takes place – that is, the range of mechanisms by means of which people resolve disputes or seek redress for injustices, or how criminal justice is administered. Justice outcomes relate to what is considered just in terms of how a dispute is resolved, and is shaped by the political context and normative beliefs. Both justice processes and outcomes may be more or less discriminatory or rights-protecting. Thus, while we are interested in local conceptions of how justice processes and outcomes are understood, we also reflect on how non-discriminatory and rights-protecting these are, with an interest in expanding rights protection, impartiality and equality before the law.

In Myanmar, disputes and injustices are resolved through a distinctly plural range of justice processes – some formal court adjudications, others mediated settlements. These can be more or less arbitrary – with issues such as corruption or discrimination potentially affecting the process and the outcome. While this can affect community perceptions as to whether outcomes are fair or legitimate, this is not always the case. In cases of dispute resolution, what seems to matter is

4 The 10 and 100 household heads, also known as village heads or village administrators were incorporated in the administrative system during colonialism and support the VTA. VTAs usually oversee 3-6 villages and household heads thus play a role at the village and neighbourhood level (technically representing 10 and 100 households respectively). They are not part of the formal government structure and can be elected by the community or appointed by the VTA. As of 2012, the 100 household head role has technically been abolished but we found people still active in this role. (UNDP, 2015b: 61).

5 This term refers to people who are homosexual or who identify as straight or bisexual but occasionally have sex with men. We use MSM in this report as this is how people we spoke with self-identified.

6 Given the research was conducted without formal government permissions it was not possible to arrange further interviews with formal justice sector representatives.

7 In one community in Mon State no women were available to participate in an FGD.

that a resolution is achieved or the problem is made to disappear, with issues of fairness, rights protection or non-discrimination at times a secondary concern. With regard to criminal cases, we found it was important that the 'right' decision (that is, one that accords with community views about who is at fault) be seen to be made, at times regardless of due process being observed. Moreover, a common outcome is that people do not seek resolution of any kind and instead internalise problems and 'let them be'.

We found the most dominant understanding of justice being achieved involved making a problem disappear. This might be by resolving the matter within oneself, through reconciliation or mediation, or by appealing to the authorities or following a court process. This reflects a complex constellation of community norms, religious beliefs and local power configurations (and the inequalities and discrimination that result), as well as the weight of Myanmar's political history, which has contributed to shaping a culture of silence towards injustices, arbitrary conduct and fear.

## CHALLENGES

Myanmar presents a challenging research environment that it is important to acknowledge. First, it was difficult to find local researchers with high-quality English, Myanmar and Mon language skills. Pairing a Myanmar researcher fluent in English with local researchers with good community knowledge and access enabled us to overcome this; however, results may have been influenced by someone from an ethnic majority being involved in interviewing people from minority groups. Second, the research team encountered challenges in accessing some communities without permission from township administrators and the General Administration Department (GAD). In five cases, VTAs refused access to their communities, saying it would not be possible to discuss justice issues without township approval. In one case this led to a change of research site. In four others it meant organising community visits through CBOs or monasteries and not being able to interview VTAs.

Finally, the research team encountered resistance from some community members to openly discussing disputes and injustices, particularly amongst older generations and in rural areas. Some respondents insisted there were no disputes or injustices in their community. Three factors appear to contribute to this. First, as outsiders spending limited time in each research site, community members were understandably reticent to speak with

us about sensitive issues. Second, a predisposition to present a positive image to outsiders was evident. This was demonstrated in Ye, where a female FGD participant scolded others when they started to speak about drugs and crime, saying they should talk only about good things to outsiders. This is likely connected to social norms that prioritise maintaining peace over disrupting community order by reporting injustices, as well as to historically engrained fears of reporting problems.

Third, many of the justice issues we sought to discuss were not conceived of as injustices or disputes. In many places, communities said there were no disputes or injustices, yet later it would emerge that there were widespread experiences of domestic violence and other issues. This underscores the extent to which awareness of rights and the law is underdeveloped – something many interviewees pointed out. It also speaks to the different conceptions of justice that exist in Myanmar. To overcome this reticence to speak openly, we adapted the interview guide to begin with broader discussions about life in the community, livelihoods and ethnic and religious make-up, before then using these issues to ask about potential disputes or injustices, without labelling them as such.

## 2. MYANMAR CONTEXT

*Experiences of justice in Myanmar are deeply influenced by the country's history and ongoing transitions.*

*While problems had existed previously, 123 years of British colonial rule from 1825 to 1948 exacerbated ethnic divisions, foregrounding the near continuous conflict between the state of Burma and ethnic armed organisations (EAOs) since independence. Under colonialism, significant autonomy was granted to ethnic nationalities in the peripheral border areas. These groups had never fully recognised or been incorporated under centrally administered rule. Following independence in 1948, decades of conflict broke out between the central government and multiple EAOs calling for greater autonomy and a more equal stake in national affairs, which were dominated by the majority Bamar ethnic group.*

**In the 1950s and 1960s, many EAOs developed governance mechanisms to provide social services within their area of control.** Alternative legal frameworks (including penal and civil codes and courts) emerged, operating in parallel to government. In central Burma, legal transplants introduced under colonialism, largely from India, continue to this day, with the 1860 Indian Penal Code still constituting the basis of Myanmar's 1861 Penal Code, the Evidence Act dating from 1872 and the Code of Criminal Procedure dating from 1898 (see also The Asia Foundation, forthcoming). While some aspects of these laws are of course out-dated (e.g. forensic evidence is not included in the Evidence Act), there is also an issue of the laws as they stand simply not being applied, or being applied inconsistently.

Between 1962 and 2011 Myanmar was under authoritarian military rule. General Ne Win launched a coup against Prime Minister U Nu to halt a slide towards federalism, which Ne Win stated would lead to the disintegration of the Union. Throughout the following 49 years, the economy was dominated by state-owned and military (Tatmadaw) enterprises, as well as by a small number of cronies of the regime (British Council, 2016: 6). This left the majority of citizens disenfranchised from the country's economic potential. Law and order were regarded as the utmost priorities in maintaining the

non-disintegration of the Union. A heavily centralised government quashed any attempt at dissent, be it social movements led by students or counter-insurgencies by EAOs.

The denial of justice and rights became a means for political control, severely affecting the ability of citizens to access effective and accountable justice through the state's justice system (Cheesman, 2015). The 1974 Constitution dismantled the judiciary, and with it the separation of powers, rendering judicial independence non-existent (Crouch, 2014: 43). The justice system became increasingly politicised, with judges replaced by political appointees and military personnel (often with no legal background), and was used to prosecute political opponents (ibid.: 42). The judiciary was reintroduced in 1989 but under the executive. Universities were regularly closed because of protests and the curriculum was highly circumscribed, resulting in a decline in the educational quality of the legal profession (ibid.: 42). In areas under EAO and mixed control, the armed groups established their own courts, which continue to this day (The Asia Foundation, forthcoming).

By the late 2000s, the governing military elites recognised Myanmar's future economic viability depended on regional integration and foreign investment. In a highly controlled process of liberalisation that allowed the military to protect many of its interests, constitutional changes were passed in 2008 to trigger economic liberalisation. Elections were held in 2010, with President Thein Sein's military-backed Union Solidarity and Development Party coming to office (British Council, 2016: 6). Under this government, important choreographed changes began to take place.

Legal changes also took place, with varying levels of impact, including the release of political prisoners, changes in labour laws, introduction of a Legal Aid Law and the establishment of the Human Rights and Anti-Corruption Commissions (although these are widely seen to lack teeth). New land laws were also introduced in 2012, although the 'stacked' nature of these – with new legislation layered on old – creates confusion and contradiction over which laws apply and how, allows for strategic use of the law by powerful individuals and does not fit with customary conceptions of land ownership (Mark, 2016: 444).

It is not clear that all of these legislative changes have been positive – and indeed some have been blatantly discriminatory and potentially incendiary. Building on the 1982 Citizenship Law, which designated 135 officially recognised ethnic groups of Myanmar, the

Buddhist nationalist organisation, Ma Ba Tha, pressured Parliament to pass four laws to ‘protect race and religion’ in 2015. These are widely seen as an effort to target the Muslim population in particular by restricting religious conversion and interfaith marriages, and came in the wake of the 2012 violence in Rakhine state (British Council, 2016: 8). This is part of wider efforts by parts of government and society to curtail the rights of Muslims, including by disenfranchising them and denying them full citizenship (ICG, 2014: i–ii). This is despite the 2008 Constitution protecting fundamental rights to justice and equality.

At the November 2015 national elections, Aung San Suu Kyi’s National League for Democracy (NLD) achieved a landslide victory, ushering in the promise of change and democracy. However, the military retains significant power: 25% of seats in parliaments (hluuttaws) remain reserved for the military, which also retains the key ministerial portfolios of Defence, Border Affairs and Home Affairs, giving it power over internal and external security. Through the Ministry for Home Affairs, it also retains control of the GAD, which is responsible for law and order, tax collection and land management and is the primary authority at district, township and ward/village tract levels (Kyi Pyar Chit Saw and Arnold, 2014: 13–15). Moreover, the military is free from parliamentary, judicial and executive oversight.

The judiciary is still not immune from military influence, with four out of the seven judges of the Supreme Court, including the chief justice, former military officers (British Council, 2016: 10). The military also has control of the police, and defines the character of local administration through the structures of the GAD. In addition, despite an ongoing peace process whereby eight of 17 government-recognised EAOs have signed the Nationwide Ceasefire Agreement, the military remains engaged in fighting with numerous armed groups, particularly in northern Shan and southern Kachin state. This enables the military to continue to present its role as central to maintaining peace. There is thus significant continuity in the controlled process of change.

Governance in Myanmar – from before colonialism to authoritarian rule – has never been premised on equality and fairness before the law (MLAW and EMR, 2014: 5). This history and the proximity of the military government to all spheres of life has meant there is very little trust in Myanmar’s formal justice system (ibid.: 5–6). In 2015, an Asian Barometer survey found the police and courts were the least trusted institutions in Myanmar (at 27% and 32%, respectively) (Welsh and Huang, 2016: 56). Political

interference, corruption and fear are among the factors that have deterred people from using the formal justice system to resolve disputes (British Council, 2016: 2).

The justice system has been understood largely as a tool for enforcing law and order, rather than one for addressing the justice needs of the population and enhancing rule of law (Cheesman, 2015). This is demonstrated through the government’s use of criminal defamation charges against journalists and rights activists for damaging the reputation of the Tatmadaw or political leaders (ICJ, 2015). Corruption at all levels of the formal justice system (from police to court staff, lawyers and judges) has led to the perception that justice goes to the highest bidder (ibid.: 161). Ordinary people thus do not believe they can achieve justice through the formal system. This is all the more so for women, ethnic and religious minorities and vulnerable groups like unregistered migrants, sex workers and MSM.

As such, people tend to rely on the W/VTAs to resolve disputes. W/VTAs have been elected by limited franchise since 2012, but it will take more time to understand how significant this change proves in practice. They remain under GAD authority, and the township administrators to whom W/VTAs answer remain GAD appointees (Kyed et al., 2016). While in August 2016 it seemed that control of administrative functions for parts of the GAD, the police, the Bureau of Special Investigations, the Fire Service Department and the Prisons Department might be transferred to civilian control, in September 2016 this possibility was retracted by the Ministry of Home Affairs (Lun Min Mang, 2016a and 2016b).

The substantial justice challenges the country faces, as well as the gradual opening-up of Myanmar, have prompted significant interest in rule of law and justice research and programming by both national and international organisations that was previously difficult to undertake (Crouch and Lindsey, 2014: 4). A growing body of research is emerging<sup>8</sup>, highlighting a range of weaknesses in the legal framework and process, common sources of dispute and injustice and the overwhelming need for improved justice outcomes for the people of Myanmar. This report contributes to this literature.

8 See for instance DLA Piper et al. (2013); IBAHRI (2013); USIP (2013); MLAW and EMR (2014); Cheesman (2015); Justice Base (2016); and Mark (2016). Important research is also currently being undertaken by UNDP and Yangon University in collaboration with the Danish Institute for International Studies and Enlightened Research Myanmar.

### 3. WHAT ARE THE COMMON DISPUTES AND INJUSTICES PEOPLE EXPERIENCE?

*Across the research sites we heard of many kinds of disputes and injustices that different groups experience, with some variation between Mon State and Yangon. Many are difficult to separate out into discrete categories and necessarily overlap. In this section we organise the disputes and injustices we heard about into overarching categories of issues as expressed by informants.*

**Importantly, the most common response when asked about disputes or injustices experienced by individuals or their community was that there were no such experiences.** Almost unanimously across FGDs (especially with women), respondents told us they had experienced no disputes or injustices, only to tell us later about egregious forms of violence against women, discrimination against vulnerable groups or ongoing disputes with factory owners regarding pay and conditions. These experiences are rarely understood as injustices or disputes. The only issues people spoke of explicitly as an injustice were land grabs, rape of minors, murder and serious theft. These were deemed crimes that required sanction. More commonly, however, injustices and disputes are perceived as being one's lot in life – eight FGDs explicitly linked this to a belief in karma, which has its roots in Theravada Buddhism<sup>9</sup>.

<sup>9</sup> Theravada ('the doctrine of the elders') is a conservative branch of Buddhism practiced principally in Myanmar and Sri Lanka. Among its tenets is the belief in dukkha ('suffering'). Theravada emphasises the importance of accepting change, believing people suffer because they attach themselves to momentary states of happiness, making change distressing. Theravada teaches that the cause and solution to a problem are within oneself, not outside, meaning one must adjust the mind through detachment so the change, good or bad, has no effect on peace of mind. In day-to-day practice, this means every individual is personally responsible for their own actions and consequences, or karma (Steinberg, 2007, 2010; Schober, 2011).

*Many people perceive experiences of injustice as a deserved and almost inevitable consequence of fortune that must be personally endured rather than investigated and resolved.*

Many people perceive experiences of injustice as a deserved and almost inevitable consequence of fortune that must be personally endured rather than investigated and resolved. For instance, one respondent said coming to peace with a problem was the best way to achieve justice. This sentiment is prevalent in both research sites but especially evident in rural Mon State. When FGDs did acknowledge disputes, they often said they were experienced by neighbouring communities but not their own.

The inability or unwillingness of respondents to identify problems they face as matters of justice can be attributed to a range of factors. It speaks to the multiple understandings of justice and of what different processes of resolving problems can look like. Stemming from this is the pervasive practice of dealing with problems individually, which may prevent people from reporting injustices, even when they identify them as such. In addition, a combination of limited trust in the quality and fairness of justice processes, on the one hand, and limited awareness of rights and legal protections available, on the other, appears to limit acknowledgement and reporting of justice issues. The law is generally perceived as something distant and only applicable to criminals and irrelevant to law-abiding citizens. For example, many women responded that they did not know anything about the police because they obeyed the law and so had no need to interact with them. The law and the justice system more broadly are seen as being for punishing wrongdoers, rather than for protecting the legal rights of all citizens. This is connected to the fact that justice is, more generally, thought of as criminal justice. The problems set out below are the most commonplace injustices and disputes described to us by respondents in Yangon and Mon State – they are not necessarily the most commonly formally reported to authorities.



Preparing for focus group discussions in rural community in Ye Township, Mon State, June 2016 © Lisa Denney

## LAND DISPUTES

**Land is of crucial importance in Myanmar, intimately connected to both people's identities and their livelihoods.** It has routinely been noted as one of the most contentious topics in Myanmar (MLAW and EMR, 2014; Namati, 2015; The Transnational Institute, 2016) and is closely linked to ethnic conflicts, as well as processes of urbanisation and economic development. Non-Bamar ethnic nationalities or ethnic groups have long felt marginalised and discriminated against by a central government dominated by the ethnic Bamar, and this has repeatedly come to a head over land. We heard about a range of different land disputes during the research, set out below.

### Land grabs

**Land grabs by the military and government have happened at frequent intervals, increasing significantly since a 1988 policy that saw farmers evicted to 'enable both domestic and foreign investment in large-scale agricultural enterprises' (Oberndorf, 2012: 1).** This resulted in use rights of areas designated 'wastelands' being transferred to private individuals or companies, neglecting customary laws and farming practices of leaving land fallow and increasing land appropriation and conflict. This historical injustice remains unresolved and farmers we spoke to

have received no compensation. Furthermore, the recent Vacant, Fallow and Virgin Lands (VFV) Law (2012) builds on this, allowing the government to reallocate 'unused land' to private companies for agriculture and mining deemed of long-term interest to the state. As a result, farmers are still being evicted unless they have official documentation proving ownership of their land. Obtaining such documents is difficult and few people understand the process or have the money perceived necessary to undertake it.

In addition, unused land also risks being grabbed by community members. In Mon State, we heard fallow land can be deemed 'wasted' if it has not been farmed on for three years (not uncommon in communities where men have left in search of work), and grabbed. This may stem from Article 25(b) of the VFL Law, which states those who were previously using VFL for a certain period of time are entitled to compensation should that land be re-appropriated (Mark, 2016: 450). But in affected communities in Mon State no compensation has been given and some community members were under the impression this was in fact legal practice.

### Illegal sale of land

In Dala we heard of a number of cases of the township authorities reportedly selling to investors land that local residents already own (through inheritance) but without registration documents to prove it. Even when they are

evicted these local residents receive no compensation. Township authorities are believed to make a profit from the sale and the new owners who, now with documentation, have an advantage on local residents.

In Shwepyithar and Hlaing Thar Yar, where urbanisation is growing and space is at a premium, we heard of local residents with formal land titles selling sections of their household plots without legal documentation to poor people who cannot afford to purchase property formally. While this gives poor people a cheaper parcel of land, their 'ownership' without documentation is tenuous and informal, which can make it difficult for them to obtain services. We also heard stories of tenants selling land without permission from the legal owners, resulting in confused layers of multiple ownership claims.

To protect against land grabs and the illegal sale of land by authorities, people are scrambling to obtain land title documentation, but the system is complicated. Some people in Mon State recounted having to pay MMK 50,000 (\$40) for the land registrar to come and validate their land boundaries – which they view as corrupt. Others told us that getting the land registrar to come and measure land was free and straightforward (in contrast with the New Mon State Party (NMSP) land registration process, which requires payment). In Yangon, communities spoke of ongoing efforts to obtain land registration documents. Since 1990, they have written to the WA, who has passed letters up to the township authorities, who have reportedly passed them to the Union level – but people do not know if this is the right process and have never received a response. These unpredictable experiences highlight how the process to obtain documentation is unclear. This lack of knowledge about the laws combines with mismanagement of them to leave land boundaries ambiguous and ownership unverified – forming a potential source of conflict where 'fuzzy zones of compromise, accommodation and bribery are the rule rather than the exception' (Hall, in Mark, 2016: 450).

### Squatters and unregistered migrants

Poor farmers who have been evicted from their land are left with little option other than to squat. The same is true for unregistered migrant labourers and the poor. These people often self-identify as 'land grabbers' (that is, they live on public land that is not in use that they have 'grabbed'). In both Mon State and Yangon, such people squat on vacant plots or by the roadside. A woman in Dala told us a Chinese businessman from Yangon had bought her family's grabbed land. As

the land was not being used she tried to live on it but was evicted repeatedly. She now lives in a temporary roadside shelter with her five children but has recently learnt that the road is to be expanded and so will have to move again.

Squatters face a precarious existence as they can be moved on and their houses demolished at any time. Female squatters spoke about living in constant fear of eviction by the township authorities and are often scared to leave the house vacant in case it is demolished while they are out. Without fixed addresses, identity cards or property ownership, squatters are easily trapped in poverty, barred from official loans and forced to rely on moneylenders with exorbitant interest rates.

### Inheritance

More women than men mentioned inheritance disputes, indicating they tend to lose out more than men. These disputes arise between family members on the death of a relative and generally relate to how the land owned will be divided in terms of size, as well as location (for instance, who gets the land with road access).

### Neighbour disputes

In virtually all communities people referred to minor arguments between neighbours about land boundaries (with common claims that one neighbour was encroaching on another's land) or land use (where a neighbour ran a business from their home that caused inconveniences such as rubbish build-up, noise or smell), or failing to maintain sanitary upkeep of the property (an issue particularly related to inadequate drainage leading to flooding).

## DEBT DISPUTES

**By far the most commonly cited disputes in Yangon were over debts. This issue was mentioned in some communities in Mon State but did not emerge as consistently.** Poor and middle-class people take loans for a range of reasons – from making large investments in property or businesses, to daily subsistence, to paying off existing loans. For daily labourers, or those whose work is seasonal, loans are often taken out in periods when they have no work. The Microfinance Law and Money Lender Act of 2011 formalised the moneylending industry and allowed for-profit microfinance companies to begin lending to clients alongside non-governmental organisations (NGOs) (some of which have been

lenders since the mid-1990s).<sup>10</sup> Over 250 licences have been approved since. Yet more than 70% of Myanmar adults still had no access to the formal financial sector in 2013 (UNCDF and MAP, 2014).

NGOs are generally the preferred lender in the communities where they exist, with interest rates of around 2% and monthly repayments. However, such NGOs do not operate everywhere; even where they are present, to access loans borrowers must provide their identity card, family registration document and proof of property ownership. Many of the most vulnerable (migrant workers, religious minorities and those who cannot afford to own land) do not have these supporting documents and are thus cut off from fair capital. We heard one instance of people trying to obtain fake documentation. The prevalence of fake documents and identity theft in Myanmar means this is likely to be a larger problem than we were able to ascertain (Zay Yar Linn, 2015).

Where microfinance schemes are absent or inaccessible because of lack of documentation, people rely on informal lenders. Often insisting on houses or assets as collateral, informal lenders loan money at high interest rates (we heard these range from 25% to 60%), with repayments to be made on a weekly or even daily basis to people who are unable to afford the repayments and, ultimately, default. Once embroiled in spiralling repayments that they cannot meet, borrowers resort to a range of options. These include taking out additional high-interest loans to pay off the first, fleeing the community, withdrawing children from school, making money through sex work or illegal gambling and even pawning their house for below market rates. These loans often are made without a formal contract, making the issue particularly difficult to resolve. Even with a contract the cases remain in a grey zone, because many informal lenders are not registered and are thus technically illegal.

While borrowers are clearly vulnerable, the lack of contracts means lenders, too, are unprotected. Some FGD participants spoke about how commonly lenders lose money they lend because they have no legal recourse without evidence of the agreement. As a result, many informal lenders are reportedly also out of pocket.

### Illegal gambling

Often discussed in the context of money disputes, illegal gambling is seen as both a cause of debt and a potential

way out of it. In Mon State, women spoke about illegal gambling (using numbers on the televised Thai lottery) as an addiction that affected primarily men. This could lead to women needing to seek loans to either pay off gambling debts or support household expenses. By contrast, in Yangon, women said illegal gambling was generally undertaken by women seeking to win money to pay off debts or contribute to their limited household income. In both contexts it was widely believed the gambling was rigged so the dealers would win. While this form of street gambling is illegal, respondents claimed the police were paid off by the dealers to turn a blind eye.

## DISCRIMINATION

**Discrimination is widespread across a range of groups, but structurally stacked against the poor, women, ethnic and religious minorities, migrant workers and MSM.**<sup>11</sup> Victim blaming is rife: sex workers and MSM interviewed claimed, for instance, crimes against them were seen as purely a consequence of their criminalised lifestyles. Furthermore, the costs of resolving a case are high and justice is on the side of those who can pay. While this research has not been able to capture all forms of discrimination against these overlapping groups, the experiences we came across are set out below.

### The poor

Money is widely understood as necessary to access services. It is needed to get an identity card and at times a job, to file a case with the police, to win a case in court and so on. The poor, therefore, routinely receive unfair treatment as a result of their inability to pay the informal user fees often associated with accessing services. As other research has found, access to money can also be seen as an equaliser in the face of other forms of discrimination (MLAW and EMR, 2014: 12). For instance, if a Muslim can 'outbid' a non-Muslim in court, then they are more likely to receive a fair hearing, despite being from a religious minority. A small number of Buddhists in Mon State told us Muslims received better treatment in the justice sector because they were generally wealthier. As a Muslim respondent noted elsewhere, however, 'if people have no money, they are treated unfairly based on their race and religion' (ibid.: 14). In either case, those who cannot afford to pay for services or outcomes are treated unfairly.

<sup>10</sup> The law describes microfinance as 'loans without collateral to reduce the poverty of grass roots people and to improve their socio-economic life'.

<sup>11</sup> We did not hear about people living with disabilities but it is highly likely they also face discrimination.

## Religious minorities

When asked about discrimination, FGD participants in both localities (who were overwhelmingly Buddhist) consistently said relations between ethnic and religious groups were harmonious and there was no unfair treatment. This was in contrast with discussions with religious minorities (Muslims, Hindus and Christians) who told us that, while there were no overt disputes with the majority group, this was primarily because they were conscious of not escalating issues for fear of wider inter-communal tensions. We noted widespread discrimination. This manifests in relation to where people can live, whether they can build places of worship, whether they can obtain identity cards that grant citizenship and relatedly whether they can travel freely within the country, obtain certain jobs or receive university degrees. In Mon State, we also found crimes were frequently attributed to those perceived to be outsiders or 'strangers'. Often, this meant blaming Muslims, and to a lesser extent migrant workers, usually without supporting evidence. While Muslims clearly bear the brunt of religious discrimination, in some communities Hindus and Christians also feel it. There are strong links between social discrimination against religious minorities and the difficulty they can have obtaining identity cards, as well as fair and impartial justice.

## Ethnic minorities

In Mon State, ethnic minorities we spoke with consider the township administration and government courts a source of discrimination against non-Bamar. This is at least perceived to limit fair justice services available to ethnic Mon to the ward/village tract level, and many respondents prefer to use Mon systems such as the NMSP courts.

At the same time, migrant workers from outside Mon State (be they Bamar or other ethnicities) felt they may experience discrimination by the W/VTA or Mon systems such as the NMSP court. This indicates that ethnicity, identity and perceived 'otherness' vis-à-vis the local community play a key role in at least perceptions of the fairness of the justice processes and outcomes one might experience. Discrimination against ethnic minorities in Yangon was spoken about much less often.

## Migrant workers

Migrant workers from upper Myanmar and the Delta (particularly following Cyclone Nargis) have come to work on rubber and fruit plantations in Mon State. This has not been a seamless migration: we heard of many instances of distrust and confrontation. For local residents, these workers represent a threat to their identity, and they are not always welcoming. For the migrants, their landless, precarious existence and partial integration mean they are distrusted and feel unprotected. In one FGD, we were told migrants had threatened plantation owners with knives when asked to move off a plot of land. In another story, migrants in a truck pretending to be the owner's friend coming to move some belongings burgled someone's house. Within Mon State, migration is more of an issue around Ye, given the large number of plantations, but not entirely absent in Mawlamyine.

In Yangon, migrant workers from across Myanmar come in search of employment in factories (although they often end up in more precarious work). While the ethnic diversity of Yangon means migrant workers are not necessarily excluded on the basis of ethnicity, their frequent inability to purchase formal land title means they are cut off from social services and seen as land-grabbers or squatters who accrue fewer rights than residents. In both Mon State and Yangon, agricultural and industrial production depends on migrant labour, and yet labourers remain widely discriminated against on the basis of their outsider or 'stranger' status.

Migrant labourers are registered as 'guests' with local W/VTAs and they spoke of having to check in with the administrator each week. This demonstrates the trust deficit between communities and outsiders. Debates about repealing guest registration with W/VTAs have been ongoing; in September 2016 the Lower House passed legislation to abolish the practice for stays of less than one month (Tin Htet Paing, 2016).

## Men who have sex with men

MSM are unclear about the law and feel unprotected and victimised. Same-sex carnal relations are criminalised under Myanmar's 1860 Penal Code and being gay is widely considered immoral (International Refugee Rights Initiative, n.d.). In an effort to crack down on those suspected of being homosexual, we were told police unfairly accuse and even detain gay men for crimes such as theft, and MSM face a disproportionate possibility of police arrest, beatings

*We heard of two men arrested for 'hiding in the dark'. One of the men admitted guilt for being homosexual and was sentenced to one month in prison. The other man received three month's imprisonment for pleading not guilty.*

.....

and even torture. Police also arrest men suspected of seeking sex with other men at night under the ambiguous Section 35(c) of the Police Act for suspiciously 'hiding in the dark'. We heard of two men arrested for 'hiding in the dark'. One of the men admitted guilt for being homosexual and was sentenced to one month in prison. The other man received three month's imprisonment for pleading not guilty. It is not possible from our research to gauge how widespread such practices are. However, in keeping with the wider literature, the MSM we spoke with feel they exist within a system that shames and punishes rather than protects them (ibid.).

### Sex workers

Sex workers (both male and female) spoke of shocking levels of violence and, because of the illegal nature of their work, are treated as criminals who do not receive the protection of the law. Sex work was acknowledged to exist in both Mon State and Yangon but was significantly more commonly mentioned in Yangon. Interviews with sex workers revealed stories of assault, unlawful arrest and rape. Respondents claimed they could not seek protection or redress through any avenue because they are regarded as criminals.

### Legal identity

Discrimination across a range of groups plays out most clearly in relation to legal identity and obtaining identity cards. This has serious consequences for the young especially. No formal identification means it is difficult to get formal jobs, get a driver's licence or obtain a university degree (or gain entry into certain university courses at all). Those without identity cards cannot borrow money from officially registered lenders. They cannot freely buy and sell land or expand businesses. There is no freedom of movement within the country without the written permission of the W/VTAs and it is not

possible to apply for a passport without identification. Opening a bank account and accessing savings is difficult. Yet those without identity cards most often said they did not feel discriminated against. Only on further investigation did they reveal the things they could not do – but they largely saw this as just the way things were and not necessarily an injustice.

A number of those discriminated against more widely spoke of difficulties in obtaining identity cards. First, only ethnicities listed as one of the 135 official ethnicities of Myanmar are eligible. Second, the cost of applying for identity cards can be very high (although this varies from place to place and will depend on the local Immigration Department). We heard that, while the price of identity cards has come down recently, it still costs at least MMK 50,000 (\$40) and sometimes much more (earlier research suggests as much as MMK 800,000 (\$644) (MLAW and EMR, 2014: 32)). Third, obtaining an identity card is particularly difficult if a person has moved from another township. People told us a person must have their family registration transferred from their former township to the new one. However, in order to have family registration transferred, we were told, you had to have evidence of owning land in the new township, without which you will be considered only a guest. For the poor and migrant labourers, obtaining an identity card is thus virtually impossible.

Muslims and Hindus are perhaps the groups most discriminated against. One women's FGD in Yangon told us that it is now a policy not to give identity cards to Muslims, although they were not sure why. This is in keeping with wider research that suggests that even Muslims and mixed-race persons who already possess identity cards ('pink cards,' which convey citizenship) are being issued with 'three-fold cards' instead when they renew them, which convey national registration but not citizenship (MLAW and EMR, 2014: 34–5). Other Muslims and Hindus have been able to obtain 'green cards' (conveying being naturalised) but these are reportedly now harder to get (ibid.: 35). One young Muslim man we spoke with in Yangon told us that, after years of trying to get an identity card so he could get a job either in Myanmar or overseas, he has given up: 'I just remove the idea of wanting that document from my head.'

## VIOLENCE AGAINST WOMEN AND CHILDREN

**Violence against women and children was apparent in all research sites, although only rape and child trafficking were acknowledged or understood as a**

*One young Muslim man we spoke with in Yangon told us that, after years of trying to get an identity card so he could get a job either in Myanmar or overseas, he has given up: 'I just remove the idea of wanting that document from my head.'*

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**crime.** In part, this relates to the strong socio-culturally prescribed roles and expectations of women and men and the inequitable power relations that emerge as a result. As other research in Mon State has found, 'women are seen as second class' (MLAW and EMR, 2014: 15). Forms of violence against women and children mentioned include domestic violence, abandonment, rape, human trafficking and child marriage. Inheritance disputes and child labour also emerged but are discussed in the sections on land and labour disputes respectively. These injustices adhere with wider research in Myanmar (MLAW and EMR, 2014: 37–41; Justice Base, 2016).

### Domestic violence and alcoholism

In all but one community (where a FGD involving older women in Mon State insisted it did not happen), women told us domestic violence was common. Most often, women did not list domestic violence as an injustice or crime that they experienced but this emerged through discussion of the impacts of alcoholism and, to a lesser extent, drugs. In the majority of communities in both Yangon and Mon State, women spoke of a large number of men (in some places the majority) being addicted to locally brewed alcohol sold in the growing number of liquor shops (beer is more expensive). Women are concerned this depletes household finances, making it harder to pay for food, school and health costs, can cause long-term health problems and can lead to violence in the home. Violence is explained as happening while the husband is drunk or prompted by arguments about finances. In Mon State, a smaller number of women's FGDs noted that drugs could lead husbands or sons to behave erratically, including being violent. By contrast, only on one occasion did men speak about domestic violence without being explicitly asked; even when asked many deny it happens.

### Abandonment

Abandonment of women and their children by husbands was reported in Mon State, with men moving to Thailand, Malaysia or domestically in search of jobs and then cutting off support. This forces women to find alternative ways to provide for their families, including by selling land and engaging in sex work.

### Rape of minors

All rape cases recounted to us were of minors (or adult sex workers in Yangon – but this was not understood as rape). This should not be taken to imply rape of adult women does not occur, but rather such cases might not be considered rape or are rarely reported to third parties because of shame and fear. Rape of minors is more uniformly seen as an egregious crime and thus is more commonly reported, generally to the formal system. This adheres with similar findings in Myanmar (MLAW and EMR, 2014) and other contexts (Denney and Ibrahim, 2012). In the cases we heard of, rape of minors is generally perpetrated by adult men against girls. While the minor involved is generally considered an innocent victim, FGD participants still spoke of them being stigmatised and seen as no longer pure. This suggests the girl is considered less valuable and more likely to be married to an older/divorced man.

### Underage marriage

Underage marriage typically occurs when a girl is raped by an older man and, rather than pursuing a criminal investigation, the families of the victim and perpetrator negotiate marriage as a settlement. In both Yangon and Mon State, men pointed to the social – not just legal – implications of rape and indicated that marriage can be an acceptable outcome in incidences where the victim's family do not wish to pursue criminal prosecution. Women, on the other hand, spoke much more about the importance of prosecuting child rape cases and achieving a criminal conviction.

### Human trafficking

In Mon State, especially urban areas surrounding Mawlamyine, child trafficking was reported. Respondents claim it is mostly girls under 20 years old who are trafficked, saying, 'If you are over 20 you are considered too old [by the traffickers]... you will not get a good price.' Trafficking was said to involve traffickers (both men and women) taking children from poor families, or neglected children who have no

*While they are certainly the most utilised justice provider, and frequently described as fair by community members, WVTAs (and the household heads they oversee) can also act as a first line of defence in a discriminatory system of control that frequently denies justice to women, ethnic and religious minorities and LGBT people.*



parental guidance, to another part of Myanmar with the promise of a good job. But the children and their families neither receive the money nor see their children, who are made to work in massage parlours and karaoke bars, among other jobs. We heard one case of children being trafficked to Thailand. Child trafficking is clearly viewed as a crime to be resolved either through NGOs, seen to have the appropriate networks to locate and return children, or the formal justice system.

## LABOUR DISPUTES

**Labour disputes were among the most common disputes we heard of in two of the three townships visited in Yangon, where industrial development is growing and workers experience poor wages and conditions.** Factory work is largely seen as women's work among communities in Yangon, although this differs depending on the factory. Clothing, shoe and synthetic hair factories, for instance, are seen as more appropriate for women; alcohol factories are seen as more appropriate for men. Oxfam estimates 90% of those working in garment factories are women (2015: 7) and industrial factory workers more generally primarily comprise young women (ALR, 2016). This is in keeping with experience in other industrialising Asian countries, such as Bangladesh (Absar, 2002). Because of the tiring nature of factory work – and societal views on the role of women once married and with children – it is generally young women, up until about 35 years of age, who work in the factories. In the past, girls as young as 13 worked in factories, but changes in labour laws now require workers to be 18 years old. When starting work, employees are meant to show their identity card to verify

their age, but some told us the factories could waive this or girls borrow the identity cards of older friends or family to qualify for employment. Labour disputes thus have an important gender and age dynamic, with young female employees often negotiating with older male managers and factory owners.

Work conditions are consistently poor. While pay can vary depending on the kind of factory (synthetic hair factories pay less than others) and skill level, the standard minimum wage, as of August 2015, is MMK 3,600 per day (\$3) (although we heard of people earning as little as MMK 2,500 per day (\$2)). An Action Labor Rights (ALR) survey found only 40% of factory workers reported having a signed employment contract (2016: 4); an International Labour Organization survey found as low as 7% (Rogovin, 2015: 4).

The workday is eight hours, with a 30–60 minute break, adhering to statutory requirements. In practice, however, employees work three to four hours of overtime each day, at just MMK 200–900 per hour (\$0.16–0.72). Legally, employers are meant to pay twice the normal wage for overtime (Park, 2014: 3). Overtime is 'mandatory', we were told, and if you miss it you are given a warning by management. This supports ALR findings that 62% of surveyed factory workers reported being unable to refuse overtime, with some having their pay deducted for doing so (2016: 4). In many factories, workers have to stand the entire day. Sunday's are the only day off. FGD participants told us factory workers receive no sick pay (although it is legally required) and stories of people who had lost their jobs after taking days off sick or to look after a sick child.

Labour unions were only legalised in Myanmar in 2012. They are not widely understood and many FGD participants conflated unions with the Ministry of Labour – some saying they are bribed by management and so do not represent workers' interests. A number of demonstrations have been held by factory staff that have reportedly resulted in modest pay rises. In other cases, such demonstrations have led to factory closures; so respondents said people generally tried not to formally complain because it was better to have a job than not.

## DRUGS

**Drugs are considered a relatively new problem – only five or 10 years old – but they have quickly become a cause of disputes.** For example, motorbike theft in Mawlamyine and Ye has grown as youth steal and sell bikes to fund drug use. Other connected disputes include accidents that occur following reckless drug driving and

theft to buy drugs. In part, these disputes are linked to the wider problem of youth unemployment (and under-employment) that makes drug-dealing more alluring.

Drugs appeared as a bigger issue in Mon State than they did in Yangon in our study, likely owing to the links between surrounding EAOs, border guard forces (BGFs) and the proximity of the Thai border. Ye is the most affected, with youth identifying glue-sniffing, ya ba/ya ma and amphetamines as the main drugs of choice. Glue-sniffing in particular is the only affordable drug for the poor and affects the wider community because it exacerbates poverty issues, negatively affects behaviour and leads to ‘high’ youth harassing people in the evenings or even committing violent crimes to pay for ‘hits’. While drug users may be arrested by the police or summoned to the NMSP as a result of community complaints, all communities expressed frustration that drug dealers were rarely apprehended. People suspect this is because police fear the drug dealers or are complicit with them.

Women are far more likely than men to view drug-taking as a problem. It is overwhelmingly men who take drugs. Women argue it diverts household resources and users become lazy, or even violent. Women also pointed to longer-term health impacts, with several in Mon State having first-hand experience of husbands, sons or brothers who have suffered mental illness as a result of drug taking. In an urban community in Ye, a young woman explained how her brother was kept permanently tied up on a plantation outside of town because he became violent following drug addiction, he was not able to be rehabilitated after three attempts and his family did not know what else to do.

**PUBLIC INSECURITY**

**Physical personal safety was not a serious concern of the majority of people we spoke with in either Yangon or Mon State.** However, a number of disputes – discussed particularly by men – relate to a range of public insecurity issues.

**Murder**

Murder is a very rare occurrence in both Mon State and Yangon, according to respondents. When murders occur, the motivations behind them usually centre around a few issues, including youth fighting that has escalated owing to alcohol and drugs, arguments about debts that have turned violent and land disputes. In Mon

*In an urban community in Ye, a young woman explained how her brother was kept permanently tied up on a plantation outside of town because he became violent following drug addiction, he was not able to be rehabilitated after three attempts and his family did not know what else to do.*

State we also heard of violence between the military and farmers, with one case of soldiers shooting and killing a villager for attempting to return to confiscated land.

**Theft and robbery**

Chickens, motorbikes, jewellery, money, gold and even abandoned property are said to be targets for thieves. With little police protection and few banks in which to deposit money and valuables, theft is a concern for people in both rural and urban settings. In urban areas, and Hlaing Thar Yar especially, people are wary of motorbike gangs who snatch belongings. Motorcycle theft is a growing problem in Mon State, youth steal and sell them to fund drugs, alcohol and gambling.

**Youth fighting**

In most communities, men spoke about ‘youth problems’. In Mon State especially, people were concerned about crime and violence around drug use. Some villages also have youth gangs that fight against neighbouring village gangs. Police may arrive but male FGDs claimed they could be bought off. Young men also fight over girls. Men we interviewed were of the opinion that much of the youth problem was driven by lack of jobs and under-education, which leaves them with little to do.

**Motorcycle accidents**

Poor roads, old bikes, unlicensed drivers, uncodified traffic laws, monsoon conditions and intoxicated drivers mean motorbike accidents are common and can result in fatalities. The seriousness of an accident (which affects where it is reported) is determined by the extent of personal injury and damage to the bike.

## Violations by the police and the military

While police ought to be providers of justice, in Myanmar they are widely seen as agents of injustice and, at times, violence. This is particularly so in Mon State, where police were routinely referred to as ‘the Burmese police’, speaking to ethnic divisions and beliefs that police serve particular communities and not others. We heard stories of people being kept in pre-trial detention for long periods. Some spoke of torture and violence, including instances of minors being arrested and forced to ‘admit’ they are older so they can be prosecuted as adults. A salient factor is that there is approximately one policeman per 5,000 citizens, meaning resources are stretched and enforcement of laws is impossible. As a result, police rely on law and order as opposed to rule of law approaches.

Violence by soldiers against civilians was described to us in Mon State. We heard of a case in Mawlamyine in which a villager was shot and killed by two soldiers, but when villagers tried to have an investigation opened by the police the matter was referred to the military system and quickly buried. People do not feel the military are subject to the rule of law.

## SUMMARY OF DISPUTES

**This section has set out the range of crimes, disputes and injustices people most commonly told us about in FGDs and interviews.** A number of these were explicitly framed as justice issues by communities – such as land-grabbing, rape and some crimes threatening public insecurity. Others emerged through discussion about problems in the community more generally, and were not necessarily framed as justice concerns by respondents. These include domestic violence and abandonment, discrimination and (often) labour disputes. Whether, and to who, the crimes, disputes and injustices are reported is another issue, explored in the following section.

# 4. HOW DO PEOPLE RESOLVE DISPUTES AND INJUSTICES?

*As other research has captured, when people in Myanmar do attempt to resolve disputes they do so through a range of justice mechanisms. These vary depending on the person's identity, the location and the nature of the dispute, as well as perceptions of available dispute resolution channels. However, a generally agreed process of dispute resolution that is largely consistent across communities can be identified.*

**This section sets out the generic path that those seeking to resolve disputes explain they work through, before introducing the more complicated picture that emerges when discussion turns to different kinds of disputes and concrete examples of justice-seeking behaviour.** This presents a confusing array of justice chains that can be disaggregated in relation to distinct disputes and how the chains vary for different groups. The chains are unpacked to reveal the process that unfolds.

Importantly, people's experiences of resolving disputes highlight that they do not view the justice system as divided into separate 'formal' and 'informal' systems, which they choose between. Rather, there is a system made up of a constellation of different justice providers. The mediation of the W/VTA, for instance, is widely seen as the start of 'the system'. And the 'non-state' EAO courts can have as much status of a formal authority as can robed judges in a courtroom.

By far the most common response to experiences of injustice or disputes is not to report. There is an overwhelming tendency to prioritise peace and social harmony over justice. Reporting is often seen by respondents as a radical, potentially subversive, act that disrupts social order. This is connected to historically rooted fear and distrust of the state, limited understanding of how to use the law to achieve resolution and socio-religious preferences for accepting problems as the result of fortune and the manifestation of karma. This tendency is more the case in Mon State than in Yangon but the general preference for maintaining peace and order is clear across both sites.

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Of course, this depends to some extent on the nature of the dispute, but the focus of the remainder of this report on the various mechanisms that people use to resolve disputes should not detract from the fact that reporting a dispute or injustice at all is relatively rare. This is especially the case for women, religious minorities and migrant workers. This disinclination to resolve disputes at any level represents a challenge for triggering demand for justice.

When people do report, the preference is almost universally for resolving disputes at the lowest level possible and avoiding escalation. This might be at the household level, among neighbours or at the village or ward level. Very few disputes ever make it beyond the village or ward level. The higher a case goes, the greater disruption it is perceived to cause, with consequences for personal and family dignity. Women we spoke with, in particular, have virtually no experience of engaging with the formal justice system.

A number of 'facilitators' are usually the first port of call for those experiencing a dispute. These include family members, neighbours, elders, 10 and 100 household heads, CBOs, political party representatives, religious leaders and, to a lesser extent, astrologers or fortune-tellers. These facilitators listen, provide advice and can act as a link to justice providers. In many cases, disputes (particularly those involving women or religious minorities) do not proceed further. We class these actors as 'facilitators', not justice providers, because their function is less about mediating or resolving disputes and more about listening and imparting advice and soothing words. This is almost always in support of immediate reconciliation; if the facilitator deems the matter serious, he or she may encourage making a complaint to a justice provider.

The only facilitators we found at times played a justice provision role were the 10 and 100 household heads. In Mon State, we found their role to be less pronounced

and often had to ask about their existence. Their role fit more with the idea of a facilitator. This is likely due to the fact that the VTA is himself (and it was a 'he' in all communities we visited) not far away and easily accessible. By contrast, in Yangon, where communities are larger and the WA is not necessarily so close, we found 10 and 100 household heads played a more active role in resolving disputes and taking matters directly to the police.

The plurality of justice providers starts at the W/VTA level (in some communities we found people go first go to a village administrator/head before the W/VTA). Where disputes or injustices are reported, this is usually as far as a case will go. Where the W/VTA cannot resolve the matter, or where one of the parties is not satisfied with the result, a case can be referred to the township administrator (for what W/VTAs speak of as 'administrative' (civil) matters, or the police (for criminal matters). From here a case may go to the Township Court – the lowest level court in the formal justice system, with original jurisdiction for charges where the penalty does not exceed seven year's imprisonment or an MMK 10 million fine (\$8,050) (Justice Base, 2016: 34). Only cases of rape of minors were spoken of as potentially going to a higher court in the first instance. From here, appeals are possible (but very rare) to the District Court, High Court and Supreme Court of the Union. This is the simplest, generic justice chain that respondents frequently described, and is depicted in Figure 1. It was consistent across FGDs with community members, as well as interviews with justice providers.

After further questioning, however, it became clear that there exists a range of variations on this generic justice chain, particularly when speaking about concrete examples of justice-seeking practice. These depend on the location (mixed authority areas versus government-controlled areas, for instance; or urban versus rural), the nature of the dispute and the identities, connections and economic means of the persons involved. Figure 2 sets out a more accurate, and messier, reality of justice seeking behaviour.

The justice chains captured in Figure 2 highlight the plurality of justice providers relied on in our research sites in Myanmar, with darker shaded boxes highlighting more used avenues, fading to white boxes, which are largely unused.<sup>12</sup> In mixed authority areas in Mon State, these include the EAO courts (in our research, this was most commonly the NMSP, as well as at times the Karen National Union (KNU)). It also includes, although much

12. Of course, this diagram would look different in different parts of Myanmar.

*When people do report, the preference is almost universally for resolving disputes at the lowest level possible and avoiding escalation.*

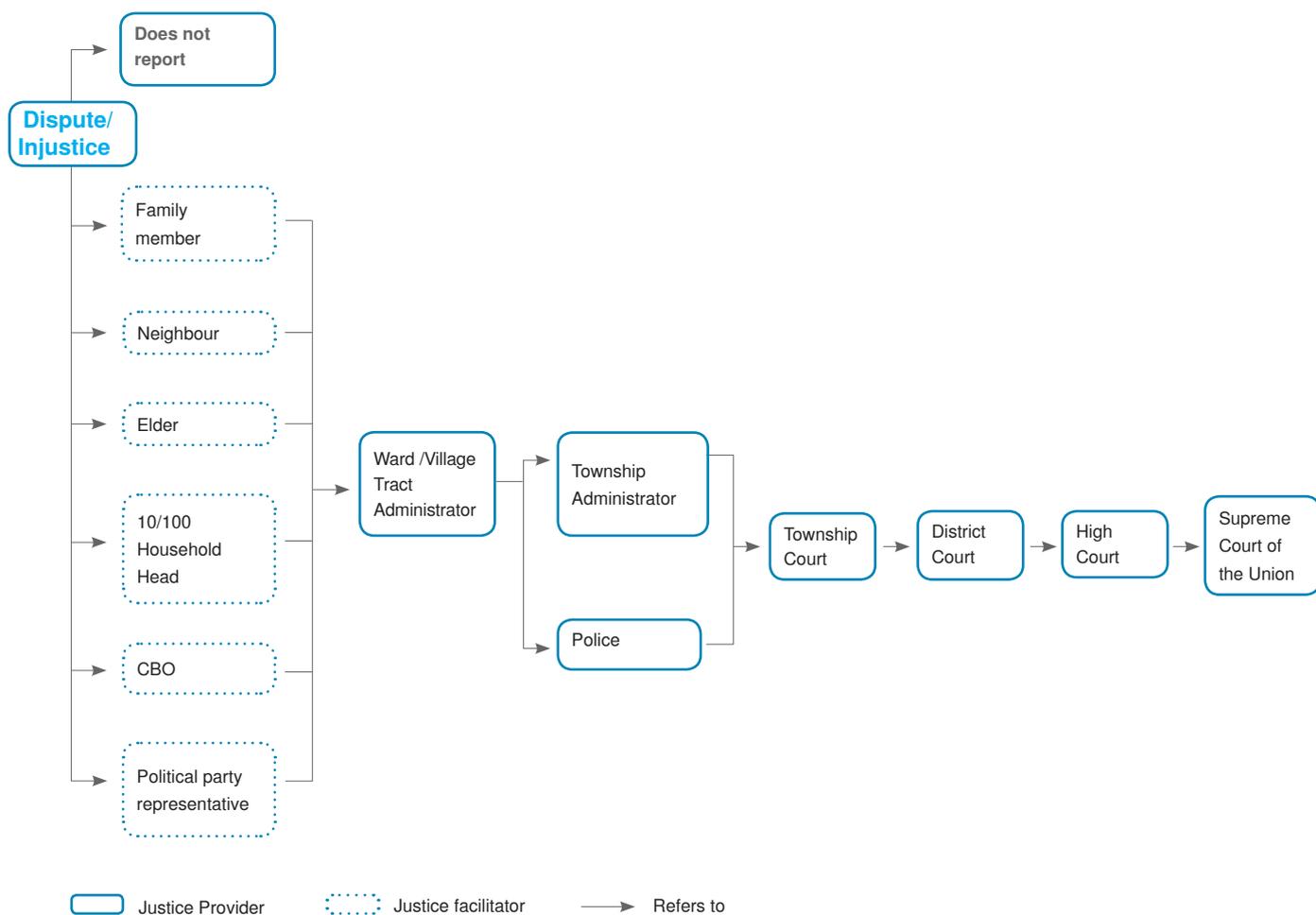
more rarely, the BGF. Religious leaders feature more strongly, especially for religious minorities; labour unions play a clear role in labour disputes; and political parties and parliamentarians are also used. The connections between the different facilitators and justice providers also become more complicated and overlapping. The remainder of this section unpacks how the disputes we heard about tend to play out along these chains. Annex 4 presents the specific chains developed to capture the dispute resolution processes we heard about for individual crimes, disputes and injustices.

A word of caution is needed, however. There is a danger that, with so little written on justice-seeking behaviour in Myanmar, what gets written about it – and especially diagrams that aim to capture practice – becomes more fixed than is empirically accurate. What is set out below are the chains as described by the people we spoke with, paired with attempts, drawing on what literature exists, to clarify and make consistent the terminology. These chains would look different in other parts of the country, in other parts of Mon State and Yangon, and even for other persons in the areas we studied, who may have had other case resolution experiences.

## LACK OF REPORTING

**As has been noted, not reporting disputes to a third party for resolution is a very common outcome for a range of disputes and injustices.** This stems from socio-religious beliefs about accepting problems experienced as a result of fortune and viewing them as payment for past life misdeeds (Schober, 2011). Seeking resolution to such problems through third parties would mean past debts would not be paid. Similarly, it is widely believed that those who commit injustices will be punished themselves in their future lives – making third party resolution unnecessary. Alongside these beliefs is a learnt fear and distrust of the state (MLAW and EMR, 2014). People also choose not to report because they do

**Figure 1:**  
Generic justice chains as explained in theory



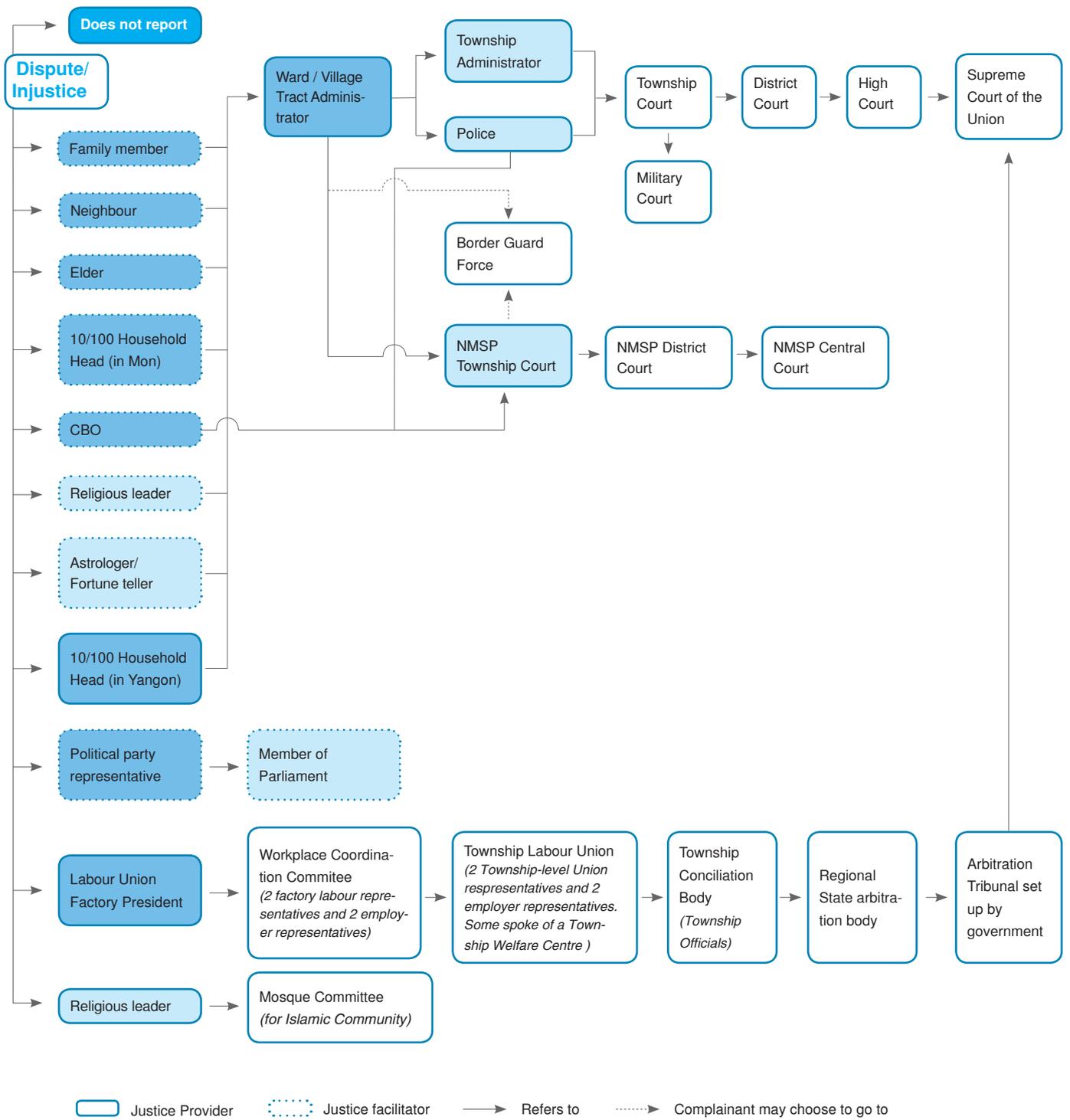
not believe the justice mechanisms available can deliver for them. This is connected to perceptions of pervasive corruption in justice institutions that disadvantage the poor (USIP, 2013: 7). Both socio-religious beliefs and historically rooted fears about reporting problems reinforce an emphasis on maintaining social order. In addition, there are also issues of people not understanding or trusting the legal processes available to them – particularly women, who told us they were intimidated by and did not understand the formal justice system.

Women told us that issues such as domestic violence and labour disputes were often not reported. In relation to labour disputes, inequitable power relations and social norms that favour modesty and obedience mean it can be difficult for predominantly female workers to challenge management. As a result, few of the myriad labour problems related to poor pay and conditions are

considered justice challenges, and people’s difficult socioeconomic position means a badly paid factory job with long hours is better than the alternatives. As a result, the overwhelming majority of labour disputes are simply not reported.

Similar to labour disputes, which frequently involve women, domestic violence is highly underreported, with women saying they will only tell someone if the violence is severe (this appears to mean sustained injuries). A recent news report highlights that ‘According to official figures, sexual assault crimes barely exist in the country of 53 million people; the police recorded just 741 cases in 2014 ... More often than not ... crimes against women are made to disappear’ (England and Carroll, 2016). Women’s inability or unwillingness to report speaks to the disadvantage women are at within society more generally and, relatedly, the shame and loss of dignity they feel as individuals and for their

**Figure 2:**  
Actual justice chains as experienced in practice



*Not reporting disputes to a third party for resolution is a very common outcome for a range of disputes and injustices. This stems from socio-religious beliefs about accepting problems experienced as a result of fortune.*



families if such crimes are reported. In the majority of women’s FGDs, women themselves were aware of this disadvantage. In a FGD in Mawlamyine, women spoke about how the community did not trust women – and said this went back to problems of tradition. Where problems emerge between a man and a woman – be they rape or domestic violence – women are seen as the problem. ‘The community is not on her side,’ a woman in Mawlamyine told us. Women are thus given little encouragement to pursue justice, though some women in urban communities said this was changing and women were becoming more courageous, including with the help of NGOs.

Other disputes we heard about that were often not reported are land grabs or the illegal sale of land by government authorities. In the past, those who had their land grabbed or illegally sold by government officials had few options available to seek justice. As a result, the vast majority of people have not reported such disputes anywhere – although they are frequently known about in the community. While this is changing, people we spoke with were clearly uncertain about land laws and the process for reclaiming grabbed or illegally sold land. Like cases of labour disputes and domestic violence, these are also cases where there are power asymmetries between the victim and the perpetrator, suggesting this influences the likelihood of reporting.

Finally, debt disputes also often go unreported. In some cases, this is because the parties involved believe that, with no contract in place, they cannot seek third party resolution. As we found with many disputes, however, there is also an element of shame, which can prevent those who are indebted from reporting.

## FACILITATORS

**In both Yangon and Mon State, facilitators are widely used as the first reporting step, in keeping with the general preference for respecting order and resolving disputes at the lowest level possible (labour disputes being the only exception – discussed separately below).** Facilitators can be family members, neighbours, representatives of women’s organisations (both the Committee for Women’s Affairs and the Mon Women’s Organisation were mentioned), elders or political party representatives. Generally, they act as a source of support for those reporting – not mediating disputes between parties but listening and making suggestions to those who come to them. For instance, women almost universally said that if issues of domestic violence were to extend beyond their immediate friends and neighbours, they would go to an elder or a local women’s organisation first. This might include a 10 and 100 household head – or the wife of the household head, who in some communities clearly also plays a leadership role among women. Reporting at this level is limited to survivors sharing their stories, and the facilitators giving suggestions about what to do, counselling the women to think of their children and how best to avoid conflict with their husbands. Most domestic violence cases very rarely go beyond reporting to facilitators. When we heard of women who pursued cases further, they were generally seeking divorce.

Facilitators can also act as connectors to justice providers, encouraging complaints or referring matters to W/VTAs, or even the police (although where this happens they generally also informed the W/VTA). In a number of the stories of child rape recounted in interviews in both Mon State and Yangon, neighbours had had to convince the parents of the child to report the matter. Families or neighbours were in all cases the first to find out – with the child either telling them or them witnessing the act or its aftermath. Families and neighbours then usually go to an elder or household head, or directly to the W/VTA, depending how proximate they are. We also heard of families contacting CBOs – either local women’s and children’s committees or NGOs – to get assistance in pursuing a case. In such cases, CBOs were said to accompany survivors to the W/VTA, or, in rare cases, directly to the police (but this was spoken about only as a possibility – we did not hear of any cases of this happening).

In some cases, facilitators are critical in making the justice system work. In one child rape case recounted to us in a rural community in Mon State, an older man in

the community raped a 10-year-old girl. The girl's uncle, with whom she lived, witnessed the act just as the man was running away. The girl's aunt and uncle went to the VTA but he did not believe them because the perpetrator was a respected man in the village. He said they must go to the clinic to prove it. At the clinic, it was clear the girl had been raped as her vagina was damaged. The VTA then contacted the police and the perpetrator was arrested. He tried to pay compensation to the family but they refused. The girl's aunt contacted Marie Stopes, who had done some awareness-raising in the community, at the same time as taking the matter to the W/VTA. Marie Stopes paid for the hospital costs and also provided a lawyer for the girl. The court case took a year, with many court hearings, but Marie Stopes covered the costs. The girl's aunt explained, 'Because of Marie Stopes, everything went well.' Without this assistance, the family could not have afforded the court process. The perpetrator was given a 10-year prison sentence and has currently served three months.

This experience supports claims we heard from a small number of women that you can achieve justice for rape crimes only if you have the support of a CBO. CBO involvement, they argue, means the police and courts will take the case more seriously and not request bribes. CBOs are also seen as crucial in reporting child trafficking cases. Respondents in urban Mawlamyine said CBOs knew what to do and attempted to trace children's families. The CBOs in turn contact either the police or the W/VTA, depending on their location.

By contrast, traditional attitudes concerned with the social consequences of child rape can also result in the justice chain coming to an abrupt halt. Men's FGDs spoke about the families of the survivor and the perpetrator negotiating a marriage settlement as a possibility to avoid the shame that would otherwise be brought on the girl and her family. No women mentioned this possibility.

Political party representatives are also seen to play an important role in assisting in resolving land disputes – primarily related to grabbed or illegally sold land. Especially since 2015, respondents told us, people speak with their local NLD party representative about ongoing land issues, who assists people with writing letters and informing them, and often the W/VTA, of the process for reclaiming land through government channels. Party representatives can present issues they deem of particular concern to their Member for Parliament, who is able to raise the issue in the State or Regional Assembly. A decision on the land dispute is not possible through this chain but community members and

party representatives claimed it could increase political pressure to resolve the matter.

Also in relation to land issues, we heard of monks being involved as community organisers in one rural community in Mon State, where a foreign company had bought farming land with the intention of building a coal-fired power station. The local monastery was leading a campaign to resist this development, with demonstrations hosted on its premises and monks actively involved in supporting community resistance. Aside from this, however, people overwhelmingly said they would not go to monks with 'laymen's issues'. This was in contrast with religious minorities such as Hindus and Muslims, who said they would take inheritance disputes, as well as marriage problems, to their religious leaders if they could not resolve them privately within the family. There was a general unwillingness to take such matters to higher levels given the shame associated with such disputes.

Finally, in cases of theft, one women's FGD spoke about using an astrologer to help identify the perpetrator – although another women's FGD said astrologers could not be used for this purpose.

## WARD AND VILLAGE TRACT ADMINISTRATORS

**If the matter goes beyond the facilitators, it is almost always passed to the W/VTA. W/VTAs are heavily leaned on and are 'the main mediators in petty crimes and civil disputes' (Kyed et al., 2016: 2).**

The majority of administrators say they do not make decisions alone, but use 10 and 100 household heads, elders and religious leaders to discuss issues and arbitrate solutions.<sup>13</sup> Administrators described using a combination of Union Law and custom or village law to resolve disputes.<sup>14</sup> They routinely told us they mediated – which involves calling both parties, listening to all sides of a dispute, encouraging reconciliation, investigating (including by calling witnesses and visiting crime scenes) and attempting to find a swift resolution, ideally by compromise.

W/VTAs can issue a range of punishments, largely consistent across communities visited. The most

<sup>13</sup> Despite the fact that 100 household heads technically no longer exist, having been abolished in 2012.

<sup>14</sup> Not to be confused with Myanmar's Customary Law, which covers issues related to marriage, divorce, adoption, succession and inheritance (Yee Yee Cho, 2012).



Sign in ward administrator's office stating money disputes will not be dealt with, August 2016 © William Bennett

common is making the guilty party sign a letter of admission stating they will not commit the offence again (khan wan). We also heard from a number of administrators in Mon State and Yangon that they might require people to carry out farm labour or cleaning of the W/VTA's office. In one case in rural Mon a man was kept in temporary detention for two days at the VTA office.

The vast majority of W/VTAs we spoke with mentioned domestic violence (although they referred to it as 'couples quarrelling') as one of several issues they dealt with reasonably regularly. They claimed these cases usually related only to verbal abuse and quarrelling, but in some cases they extended to physical violence. W/VTAs explained they would listen to both sides and encourage the couple to reconcile, emphasising especially the impacts on children. Where a husband had been violent, W/VTAs said they routinely required him to admit his wrongdoing and sign a letter stating that he would not repeat the offence. Many W/VTAs said the matter was then finished and rarely happened again. Those who acknowledged repeat offenders (in Mon State and Dala township) said they punished them by

making them do community labour.

In cases where either party requests a divorce, the W/VTAs said they would send the couple away for one to two weeks, asking them to think about it first. Usually the W/VTAs said this was the last they heard of the matter. Where a divorce is still requested, however, the W/VTA refers the matter to the township level, as W/VTAs cannot grant divorces. By contrast, religious minorities said they sought divorces through their religious leaders. Yet, despite most people knowing the process, we heard of only a few cases of couples successfully obtaining a divorce.

In an urban community in Mawlamyine, a young woman explained the drawn-out process of her mother trying to obtain a divorce, which had lasted over six months. Growing up, she watched her mother physically and mentally abused for 12 years. Her mother wanted a divorce but did not know how to go about it. After receiving training from a local CBO on women's empowerment, the daughter took her mother to the WA and encouraged her to tell him what had been happening. But the administrator was very unhelpful. He said she was old and should not get divorced at this age. Over three months, the daughter continued to take her mother to the administrator each time she was abused. Eventually, the administrator said he would open a case only if they paid MMK 10,000 (\$8), which the daughter grudgingly handed over. He called her mother and father to a hearing, which she attended as a witness. The administrator was aggressive and did not want to deal with the matter. The household heads were also there, imploring the couple not to divorce and to think of their children. They told the daughter that she was disrespecting her father by speaking about family matters in public. The daughter told them she wanted the WA not to think about the children but just to listen to her mother. The administrator replied that she said these things only because of the women's training she had received. They have since been for hearings at the administrator's office three times. They are still not divorced and her mother continues to suffer abuse.

W/VTAs also commonly deal with disputes between neighbours relating to land boundaries or environmental sanitation. In these cases, maintaining good relations is considered of great importance and so, rather than necessarily calling both parties, one party might complain to the W/VTA, who might later call the neighbour to raise the matter privately. Several women in Ye, for instance, complained about a neighbour who was throwing rubbish in other people's compounds and in front of their houses. One of them told us that, 'because we've been neighbours for a long time we

try not to complain about it and create problems' but when it gets bad she goes to the WA, who speaks to the neighbour.

If the dispute is larger, however – for instance about land boundaries – the W/VTA will call both parties to hear their sides of the story, investigate the property concerned and then mediate between the parties to encourage them to find a mutually convenient solution or decide in favour of one party or the other. In Ye, a woman recounted her ongoing land dispute case. Her mother and uncle had inherited land from her grandmother and divided it evenly between them. Her uncle then sold his portion of land to another family, which, over time, began encroaching on her mother's land. To prevent this, her mother built a fence to enforce the even boundary, but the new land owners demanded it be taken down and took the matter to the WA. Even though the WA knows that even amounts of land were inherited, and that the woman's mother has her land registration documents to back her claim, the matter is still under consideration. She does not know whether the new landowners will try to take the matter further if the WA finds in her mother's favour.

In addition, other disputes frequently dealt with by W/VTAs relate to issues of public insecurity – such as theft or robbery (especially in Mon State; in Yangon these are more likely to be reported directly to the police), youth fighting and motorcycle accidents. More serious crimes such as murder were said to be referred by W/VTAs directly to the police. Similarly, W/VTAs we spoke with said they did not deal with rape cases; these are automatically referred to the police. This was supported by the child rape cases we heard about – although in some cases the W/VTA took some convincing (by way of medical examination) that a child had indeed been raped.

While debt disputes frequently go unreported because of a lack of documentation to verify the financial arrangements, women's FGDs suggest W/VTAs will take on disputes if there is a written contract – or some other form of evidence of the agreement. We visited two WA offices where signs hung prominently stating that the WA would not deal with money disputes. However, W/VTAs noted that, in practice, they had no choice but to try and mediate these matters in order to keep the peace. There were some suggestions during FGDs that certain WAs receive part of the repayment in return. W/VTAs say that, if there is a contract, the matter is relatively easy to solve. One VTA in a rural community near Ye takes into account how much money has been lent, as well as the financial capacity of the borrower to repay. He then proposes a compromise repayment contract that means the lender will recoup some (but not all) costs and the

borrower will not face financial hardship in repaying. If either party is unwilling to accept a compromise, or in some cases if there is no contract, the W/VTA refers the matter to either the police or the EAO courts, although we heard of this happening in only one case (see below on EAO justice).

There are also important limits to what W/VTAs can do. In cases of abandonment, for instance, the justice chains available to women are very short. If a woman does report, this is apparently always to the W/VTA after speaking with the family, neighbours and elders. In all the cases we heard about, the W/VTA, as well as the facilitators, were not able to contact the husband and thus nothing could be done. Even when the husband is located, receiving any financial support is far from straightforward, as the case below demonstrates.

In a rural community in Ye, the husband of a young woman went to Malaysia to find work and send money to support her and their two children, one of whom is paralysed. But since leaving in 2014 he has not sent any money or made any contact. As the mother of a disabled child who cannot walk or feed himself, the woman cannot work and was forced to borrow money from lenders at high interest rates. When she could not afford to pay off her loan she began to explore the possibility of selling some of the family's land. First, she went to the VTA, because the land was in her husband's name and no one would buy from her in his absence. The VTA wrote a statement and sent the matter, along with photos of the woman's children, to the local NMSP office. The NMSP came to her house to assess the situation and then called a meeting with the VTA, as well as the administrator from the husband's home village. They all agreed she could sell the land and the NMSP acted as a witness to the contract of sale to another man in the village. Three months after selling the land, and two and a half years after leaving the country, the woman's husband returned and was furious she had sold the land without his permission. He is now suing the man who bought the land in the Township Court; he has not yet been to see his wife or children and is not providing child support. The wife has attended the court hearings as a witness five times already. Each trip to court costs her MMK 10,000–20,000 (\$8–16) and she must find someone to look after her disabled son.

Many we spoke to regarding land grabs had gone to their local W/VTA to complain but there was little they could do – in part because they also were uncertain of the appropriate process to follow, as well as because of the political interests at play. Where W/VTAs have assisted, affected community members have submitted

letters stating their complaint to the VTA, who has passed these on to the township administrator, who apparently in turn has passed them on to the Land Records Department. But nothing has come of this.

In virtually all cases that we heard about, dispute resolution has not proceeded beyond the W/VTA. The colour coding in Figure 2, as well as the diagrams in Annex 4, highlights that, although higher-level justice providers do exist, they are rarely used and in some cases are not known about. We did hear about land disputes over boundaries being referred to the township administration, where the Land Records Department can be called on to measure the land and reinstate boundaries. We also heard in one community in Mon State that the VTA refers most matters to the township administrator because he is not interested in fulfilling his role. More broadly, however, the W/VTA is by far the most utilised justice provider.

**POLICE AND THE COURTS**

**Where a W/VTA is not able to resolve a dispute, or where the parties are not satisfied with the W/VTA’s decision, matters can be referred either to the police and court system or to the EAO courts (see below).**

Or, if a crime or dispute is considered severe (measured in terms of financial loss or injuries sustained), the matter will be referred to the police. For example, W/VTAs may pass crimes such as murder, rape, serious theft and motorbike accidents resulting in injury or damaged vehicles to the police. Men’s FGDs spoke much more often than women’s FGDs did about the police being involved in justice provision. The women’s FGDs made it clear that women rarely interact with the police and their experience of justice providers is more localised than that of men.

After a crime is reported, the police officer we spoke with said police ‘can intervene to close a case by mediating a settlement’. If this is not possible or if the crime is deemed too serious, then they investigate and open a case. Some FGD participants reported that, even where a case is opened, police action can stall and the case goes nowhere. This was said to have happened across a range of disputes and crimes, but is particularly related to theft. The majority of FGD participants claimed it was necessary to pay to open a case, and numerous subsequent bribes are necessary if a criminal prosecution is then sought, with opportunities to influence the justice outcome all the way up to the point of delivery of the verdict itself, and even on appeal. That aside, the police officer we interviewed described

*While there is technically a formal legal process in place for crimes like domestic violence, it may as well not exist from the perspective of many women seeking justice or protection.*



- the official investigative chain as follows:
1. Investigate the reasons behind someone bringing a case to the police.
  2. Investigate the ‘who, how, when and why’ of a case, looking for motives and root causes.
  3. Make an arrest.
  4. Consult witnesses and experts during a deeper investigation; if the information is sufficient then open a criminal case against the accused.
  5. Pass the case on to the courts.

The officer indicated that some police feel W/VTAs can ‘act as if they are in the past sometimes – protecting the status quo and not challenging injustices in order to keep the peace’. For example, in cases of youth fighting, the police are likely to be called only if the matter escalates and becomes very violent. Otherwise, elders and household heads are typically called on to mediate and ‘cool’ the situation. Despite youth fighting being a common complaint, we heard of no cases making it to court, even if this avenue is theoretically available.

In the very rare case of domestic violence being referred to the police, women in Mon State and Yangon told us they were not treated seriously; one women’s FGD in Mawlamyine claimed women had to pay MMK 20,000 (\$16) to get the police to open an investigation and take action. Women felt that, if their matter ended up in court (we heard of no cases of this happening in practice), they would be at a disadvantage because they cannot speak well as a result of their poor education, and their husbands would be able to afford a lawyer and other court costs (including bribes) while they would not. While there is technically a formal legal process in place for crimes like domestic violence, it may as well not exist from the perspective of many women seeking justice or protection.

Yet, in relation to child rape cases, we heard the formal justice system works surprisingly well. In a rural community in Ye, a 24-year old man had raped a nine-

year old girl just 10 days before we arrived. The rape was especially violent, with the girl suffering internal bleeding, organ damage and severe bruising. Because her injuries were so apparent a neighbour asked her what had happened. The girl's mother was uncertain whether she should tell anyone but the neighbour insisted and informed the VTA, who telephoned the township police station in Ye. The police came that same evening to arrest the man and the girl was taken to the township hospital, where she was still recovering from her injuries at the time of our visit. The police have retrieved the girl's clothes and sent them for forensic testing in Yangon, and the girl has undergone medical tests, which are now being sent to court. The investigation is ongoing and the police do not yet know the court date. During this process, the police have reportedly been very helpful and efficient and not asked for payment. This appears to be a positive example of the justice system working as it should.

In cases of child trafficking, people we spoke with reported that the police generally took such cases seriously but were impeded by a lack of evidence. As a result, often little came of the attempts to seek justice – although in some cases children's families are traced and children are returned, generally with the cooperation of NGOs in the cases we heard of in urban areas of Mon State.

Surprisingly little was heard about the township or higher courts, with women in particular having very little knowledge of the court process. In both Mon and Yangon, FGD participants saw township courts as very slow (with cases taking as long as three years to be resolved) and highly corrupt, and thus unaffordable for most people. The limited discussion of the courts in our research is suggestive of the remove at which these parts of the justice system exist for many people. We heard of a very small number of cases reaching the District Court, and nothing higher than this, although men in particular knew higher courts were in theory available for appeals.

## EAO JUSTICE

**In Mon State, for serious crimes that are beyond the authority of the W/VTA, for matters he cannot resolve or where parties are not satisfied with his decision, parties may request the matter be referred to the NMSP instead of the police.** While NMSP courts begin at the township level, FGD participants spoke of a NMSP village office that seems to play a facilitating role in transferring cases from the W/VTA to the NMSP courts. The NMSP courts work without lawyers, using a three- to five-member committee that questions both

the complainant and the accused, calling witnesses and investigating if necessary, and passing judgement (appeal is possible from the NMSP Township Court to the NMSP District Court and Central Court). According to FGD participants and an NMSP representative, the NMSP courts resolve disputes through a process of mediation, investigation, deliberation and, if necessary, punishment. Their sentences walk a fine line between upholding Mon traditions and cultures, and formal laws. Respondents said punishments tended to be more lenient than those of the formal justice system. We also heard from a W/VTA and elders in one community that the NMSP might keep a suspected perpetrator in jail for a given period of time as a forgone punishment, without holding a hearing in their courts. Despite this, many Mon interviewees consider the NMSP courts more reliable, faster, cheaper and, in rural areas, more powerful than the formal justice system. It is very rare for the NMSP to be approached by non-Mon, 'but not entirely alien' where they have good relationships with others in the community, according to an NMSP representative in Ye.

An NMSP spokesperson also told us the NMSP could get involved in cases pending in the formal courts. For example, if the police arrest someone with little cause, unsatisfied relatives may tell NMSP representatives, who then enquire about the legal basis of the arrest and exert pressure on police to release the person arrested. The NMSP relationship with the police was described as 'adequate... even if some still consider [the NMSP] rebels'. Some community members told us that cases could pass from the EAO courts to the formal justice system but not the other way around, although there was limited information about this.

A wide range of cases are taken to the NMSP courts – including those related to murder, theft, motorcycle accidents and youth fighting. The NMSP in Mon State often deals with problems relating to drugs, mostly trying to rehabilitate addicts about whom community members complain. Land disputes where the parties are both Mon are also taken to the NMSP courts, and the NMSP has its own land registration office that can measure and decide on land boundaries. While one women's FGD in Mon said they could pursue child rape cases through the NMSP courts (and would prefer this option because there are some female judges there who they think will give a fairer hearing than the formal system), other Mon communities said cases of child rape were more appropriately dealt with through the police. Finally, debt disputes constitute a large portion of NMSP court cases, as the example of a woman who acted as a loan broker in a rural community in Ye township demonstrates. This woman facilitated someone borrowing MMK 4,000,000 (\$3,200) from a lender she

knew, on the basis that they would repay the full amount after 10 months. But after two years the borrower had not made any repayments. The lender reported the matter to the VTA and the loan broker was called as a witness to the agreement. There was no documentation in support of the contract and the VTA kept delaying his decision, saying the parties should resolve the issue among themselves – she believes because the borrower had paid him a bribe but possibly also because there was no documentation to substantiate the lender’s claims. Eventually, she asked the VTA to refer the case to the NMSP court because she believed they were less corrupt and had the authority to make a binding decision. The NMSP court decided that the borrower had to repay two-thirds of the money loaned over a period of three months – a decision she and the lender were satisfied with.

Where an incident involves violence perpetrated by a security sector actor, such as the military or an EAO, then justice options are limited. The police may be explored as a potential provider but it is more likely that perceived unfairness around the cost, timeliness and ethnic bias of their service will lead to people approaching the EAO courts. However, it is difficult for these institutions to feasibly bring a case against a government security actor; as such, based on the very few cases we heard of in Mon State, these are referred by the EAOs back to the police and township administrator for investigation, with no result in the cases we heard of.

In addition to the NMSP courts, people in Mon State can decide – although it was described as very rare – to approach the BGF if they live in an area where they have influence, or wish to pursue more aggressive remedies. In one rural community in Ye township, a very small number of debt disputes had been taken to the BGF, who would recover lost monies through threats for a share.

## LABOUR DISPUTES

**Labour disputes have a resolution process that is distinct from the general justice chains discussed above.** Perhaps because of this, we found people were confused about it. With labour unions legalised only in 2012, their role is still not well understood. Many respondents described the union as part of government or factory management. It is primarily viewed as an intermediary, to negotiate acceptable terms between workers and management, rather than as representing labour interests. Factory union representatives are at times seen as the voice of reason, dissuading workers

from strike action that could lead to them losing their jobs. Other respondents saw this as a sign of the union representatives having been co-opted by management, potentially through bribery. Respondents also seemed to conflate the labour union and the Ministry of Labour. As a result, it is difficult to determine which actor their views are attributable to, underscoring the need for much better awareness and education around the union, its role and worker rights. An interview with one labour union president confirmed the weak understanding of unions among the workforce. As a result, union membership, and correspondingly their budget, is low (membership fees are 2% of monthly salaries, according to the labour union president, but most workers we spoke with did not appear to know that union members had to pay fees).

It is difficult to piece together the chains for labour disputes from the different accounts from FGD respondents, the labour union president and the literature on Myanmar’s labour laws. The various committees are not well known – variously referred to by different names – and interviews did not mention the higher levels of arbitration at all. Interestingly, only civil society organisations appear as facilitators in relation to labour disputes – and they are not the first step in the process as they are in the vast majority of other disputes. Instead, the dispute resolution chain begins with the labour union factory president, who is elected from among members of the factory-level union. This president is responsible for maintaining the relationship between employees and employers, strengthening the capacity of the workers, monitoring workplace conditions, advocating for the well-being of workers, ensuring worker compliance with factory rules and regulations and representing the factory union at higher levels. The president is the first port of call for employees facing disputes, either with other employees or with management (seemingly regardless of whether the employee is a union member). He or she speaks with both parties and attempts to mediate a peaceful resolution.

However, where the issue concerns dissatisfaction with workplace facilities, pay or unfair dismissal, the matter is referred up to the Workplace Coordination Committee. This Committee, made up of two union or labour representatives and two employer representatives, tries to negotiate and mediate between the disputing parties. Most people with a dispute aim to resolve the issue at this level, in part because of employee concerns about losing income or their job. The labour union factory president told us employers would occasionally give a small pay increase, even where the matter was not related to pay, to make the dispute go away.

*Discriminated groups feel there is nowhere they can go to resolve many of the associated injustices they face.*



Where either disputant is not satisfied with the outcome, cases can be referred to either the police or the township (it is unclear whether this refers to a meeting between township-level union representatives and the employer's representatives, with townships officials in attendance, or the township conciliation body specified under labour laws, which is made up of purely township officials) (Park, 2014: 4). The police are used where the dispute involves physical injury. If a dispute escalates to this level, employees may, where this is available, approach a CBO offering free legal representation to help them better engage with the formal justice system.

Beyond the township level are other dispute resolution appeal channels stipulated in the legislation (Park, 2014; UNDP, 2015a). These include the Regional/State Arbitration Body, a tribunal set up by the government and, eventually, the Supreme Court of the Union. However, FGDs and interviews mentioned none of these stages of dispute resolution, which suggests they exist only at an extreme remove from people's day-to-day disputes.

## **LACK OF JUSTICE CHAINS FOR DISCRIMINATION AND DISCRIMINATED GROUPS**

**There are virtually no justice pathways for those who experience discrimination. Being discriminated against is often not perceived as an injustice but rather as a reality that must be accepted.** We heard about a very limited number of incidences of discriminated groups complaining to their VA about symptoms of discrimination, such as not being able to obtain degree certificates or travel freely because of not having an identity card. But we came across no one who complained about being directly discriminated against.

Furthermore, there is a sense that discriminated groups feel there is nowhere they can go to resolve many of the associated injustices they face. Religious minorities, such as Muslims and Hindus, told us they preferred to resolve disputes with a Buddhist by simply forgetting the

matter and not complaining anywhere, wary that disputes between them and a Buddhist could too easily inflame communal tensions. As a result, they usually simply give up the matter. Where a dispute is with another Muslim or Hindu, they may use the same chains as everyone else – and seemed also to view the W/VTA as their immediate local justice provider. However, both Muslims and Hindus far more than other groups spoke of relying on religious leaders for resolving disputes within their own communities. The few Christians we interviewed did not tend to use separate justice providers in the areas included in our study.

MSM we spoke with in Yangon (we were not able to interview any MSM in Mon State) did not dare report discrimination to anyone other than the local CBO, Colours Rainbow, which advocates for gay and transgender rights. Sex workers feel unable to report any crimes – including rape and assault – to any authorities because they do not believe the law protects them. Women rarely feel they can achieve justice against a spouse – with one woman telling us, 'There are no rights for women. If you try to get justice, you won't get anything.'

There is seemingly no redress for discrimination in relation to the important issue of identity cards, without which people are excluded from services and full legal protection of their rights. Those without identity cards – often Muslims and migrant workers – may have a relationship with their household head or the W/VTA and seek assistance from them to overcome social barriers presented by not having a card – such as accessing formal land deeds or obtaining documentation to allow them to travel within the country. While the W/VTA can assist in overcoming some of these barriers, adherence to rules and authority is so engrained that often the W/VTA will be able to refer the issue only to the township level, where administrative systems tend to be unyielding. Discriminated groups are thus left in a situation whereby the system will only provide justice with identity cards that, simultaneously, it refuses to provide.

## 5. WHAT FACTORS INFLUENCE PEOPLE'S DECISIONS ABOUT WHERE TO REPORT?

*The justice chains discussed above set out the multiple ways people may attempt to resolve the disputes and injustices they experience. How, then, do people decide which of the available options to pursue? It is important to note that, while the chains depict a range of options, this should not imply there is a 'justice marketplace' in which 'consumers' can forum shop for the best option available – as models of competitive markets often imply. Rather, people in Myanmar face an at times bewildering array of intimidating avenues that are poorly understood and widely distrusted. Few people feel the justice systems available are on their side.*

### **A range of factors influence people's decisions on where to report among these plural providers.**

As noted, people tend to want to resolve disputes at the lowest level possible. The purpose of the justice system is frequently said to be 'to make big cases small and small cases disappear.' This can result in a local, insular and self-sufficient approach to resolving disputes, related to the pervasive practice of Theravada Buddhism, as described above. An interest in solving disputes at the lowest level, therefore, is not related only to a lack of trust in justice providers or access barriers but also to deeply held socio-religious beliefs about how problems are appropriately dealt with.

When initially asked why people go to certain providers over others, people tended to respond that this was simply the process or custom. Here, we saw a strong reliance on the generic justice chain set out in Figure 1, and people are very familiar with the steps involved. Our questions were at times greeted with exasperation – people said they behaved in certain ways simply because that was what was done. This could trump all other considerations – in some communities in Mawlamyine, we heard of people reporting to the VTA even though they did not trust him, because that was the custom. This respect for custom influences what

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.....

issues are reported, by whom and to whom, and the steps people follow to resolve disputes. People tend to what is expected of them according to their identity and understood role in society.

Deeper discussion about different kinds of disputes and actual justice seeking experiences, however, revealed a range of motivations driving people's justice seeking behaviour. The two factors that emerge as most important are trust in, and shared identity with, justice providers and the perceived effectiveness of these in enforcing an outcome. In Mon State, many people spoke about preferring the NMSP court over the formal court because as Mon people they trusted it. Some connect this to issues of patriotism, pointing to their lack of trust in the national government and 'believing in' the NMSP. One man claimed the NMSP was 'fairer, quicker' but, perhaps more importantly, 'not the government'. Others see it as simply a division of ethnicity, saying, 'If you are Mon you will go to NMSP, if you are Karen you will go to KNU, but if you are another ethnicity you will go to the police.' Many respondents spoke about their W/VTA in the same way, saying the W/VTA was part of their community, is known and understands people's issues. This is in contrast to the police or the formal court system, for instance, which is at a remove – both in the sense of being physically far, unaffordable and poorly understood, but also in terms of their identity. It is made up of policemen, lawyers and judges that people do not identify with, and dictated by laws people do not know, so is an unknown quantity that people would rather avoid. In a similar way, religious minorities, such as Muslims and Hindus, are at times more comfortable dealing with disputes within their own religious community. Women expressed a similar sense of shared identity when preferring to use women's CBOs as a mechanism for accessing justice.

*The only people who appear to factor issues of fairness into their decision-making are groups that are discriminated against.*

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This consideration of trust and identity is balanced against a consideration of the effectiveness of a provider and their authority to enforce a decision within a particular locale. This can reinforce or contradict trust and identity considerations. For instance, people who identified with the NMSP also said they used it because ‘The armed groups have authority and power’ and that, if they decide something, ‘We have to obey.’ Another person claimed the NMSP had the authority to decide issues and ‘are the end of the process so they can finish issues’ and people will accept their decision. The respondent felt the local VTA did not have the same level of authority.

By contrast, another woman who identified with and trusted the NMSP said that, despite this, they are not always effective because ‘They do not have full authority.’ So, even though many Mon people prefer the NMSP, they will go there primarily for small cases like loan disputes, not for bigger criminal matters. In the same way, many respondents explained they went to their W/VTA because this actor had the power to make decisions that are enforced. This is important because it suggests people are concerned with effectiveness of the justice avenues available to them. Multiple respondents made reference to their choice of provider having to do with who had authority to enforce a decision. Effectiveness is not here related to fairness (although this is also important, discussed below) but to the ability to make binding decisions. Among respondents, this could be the NMSP (in areas surrounding Ye), the W/VTA and, less often, the formal justice system.

Other considerations relate to more tangible barriers to accessing justice, including timeliness, cost, language and understanding the process. Timeliness of justice was consistently cited as influencing decisions about the choice of provider. The formal system is seen to take an exceptionally long time, with the courts making multiple appointments that incur additional costs. We heard of cases of court hearings going on for three years with no result. By contrast, the W/VTAs and the NMSP courts are seen to provide much swifter decisions (although some say the NMSP court can take up to one year for serious

cases). W/VTA decisions are sometimes made on the same day and usually take no longer than a month (although we did hear of some cases taking longer). Justice processes can be upsetting and so people tend to want them finished as soon as possible. More importantly, they eat into people’s work time so tend to be avoided because of lost earnings.

Cost is clearly a factor influencing people’s decisions about where to report. As one respondent told us, ‘For me, money is everything. If you have money you can get everything. If you don’t have money, you have to know how to be very patient because it will take a long time.’ If an issue goes to the formal court system, people have to pay a range of costs that act as a barrier to justice, including to file a case or for witness statements, typewriter fees, transport fees and so on. The costs of hiring a lawyer for the formal court system are hugely expensive – and often simply not possible – for the vast majority of people without access to legal aid. In addition, the bribery – for example of police, law clerks, lawyers or judges, or medical staff for test results – that is perceived as necessary to win a case also makes the formal system at least appear unaffordable. We heard of a case of a woman’s husband allegedly being falsely arrested for taking drugs and his wife felt she would have to bribe the clinician to ensure her husband’s urine test came back negative, not because she thought that it wouldn’t but because the other party might pay to make it come back positive.

Although cost clearly plays a role in influencing justice-seeking behaviour, people do not always prefer the cheapest option. While people complained about the constant demand for fees and bribes within the police and formal court system – which were seen to make that system largely inaccessible to the poor – costs associated with using W/VTAs and the NMSP (often spoken of as ‘donations’) were sometimes seen as acceptable in the case of effective dispute resolution. This is considered fair payment for services provided rather than unfair bribery. The problem is thus not so much with the cost of justice, although where multiple bribes are seen as necessary this clearly becomes an impediment, as with whether the costs incurred are deemed legitimate and whether they influence the outcome.

Language was also a commonly cited barrier by Mon communities in accessing the formal justice system. Those without fluency in Myanmar language felt they would be at a disadvantage in formal court proceedings. As a result, such people prefer to use the W/VTA or NMSP systems. A lack of knowledge of the laws

*These considerations of fairness act more to push people out of the justice system entirely, with people deciding that a lack of fairness means they are better off not reporting, than to lead them to seek better justice outcomes.*



and legal process also acts as a deterrent to using particularly the formal justice system, especially among women. Women in one FGD in Mon State spoke of being afraid of going to the police or court because they felt uneducated and that they had insufficient knowledge to be confident using such systems without being taken advantage of. As a result, they avoid the formal system and try to solve disputes within the village instead. The fact that the NMSP courts do not use lawyers was cited as something making them seem more accessible in Mon State. The very formality of the formal courts can be off-putting and intimidating for those unfamiliar with such practices.

People certainly have perceptions of which providers they think are more or less fair (often connected to issues of identity and trust) but this does not appear to drive decision-making about where to report very strongly. Most people conceded that no systems were guarantees of fairness – justice can always be bought and personal relationships between justice providers and those involved in disputes can be hard to avoid. The only people who appear to factor issues of fairness into their decision-making are groups that are discriminated against: Muslims and Hindus who feel they will not get a fair hearing vis-à-vis Buddhists; MSM and sex workers who feel their criminalised identities mean they will not receive fair treatment; and women who feel they cannot win cases against men. These considerations of fairness act more to push people out of the justice system entirely, with people deciding that a lack of fairness means they are better off not reporting, than to lead them to seek better justice outcomes.

Perhaps the most practical consideration that can influence people's justice-seeking behaviour is the nature of the dispute in question. While the above factors all play a role, ultimately if a matter is understood to be minor – for instance related to neighbourhood quarrels, domestic violence (where physical injury

is not sustained) or small debts – the matter is likely either to not be reported or to be resolved at a level no higher than the W/VTA. If a matter is deemed serious – in terms of the injuries or financial costs suffered – either the police or (in Mon State) the NMSP will more likely be involved. A general rule of thumb that men expressed was that you go to the W/VTA for mediation, the police for investigation and the courts or the EAOs for punishment. There is no hard and fast division of disputes, and ultimately the severity of a dispute or injustice is determined by whoever experiences it. Yet, on the whole, there is an acknowledged division of labour that W/VTAs frequently noted, for instance. The nature of the dispute thus intermingles with the other considerations set out here to drive justice-seeking behaviour.

## 6. HOW FAIR AND NON- DISCRIMINATORY ARE JUSTICE OUTCOMES?

*A range of issues related to the justice process affect the fairness of justice outcomes. Unfair and discriminatory outcomes are often attributable to the inconsistent and discriminatory processes that precede them. Local understandings of justice, as well as a preference for resolving cases at the lowest level, play a part in delivering unfair and discriminatory outcomes. Similarly, a lack of clarity on roles, jurisdiction and legal decision-making can lead to arbitrary judicial outcomes. Finally, corruption ultimately means justice outcomes can be bought at all stages of the justice chains.*

**The varied understandings of justice in Myanmar, as well as a limited awareness of the rights protection aspects of the law, can work against fairness and non-discrimination.** Official views equate justice with the enforcement of existing laws (supporting Cheesman's (2015) idea of a law and order approach to justice in Myanmar). At the community level, people emphasise making problems disappear in whatever way best achieves that – by internalising the problem and not reporting to anyone, through mediation or through the formal justice system. Because many people equate justice with the reduction and disappearance of a problem, with people accepting whatever path that leads to closure most quickly (including by not reporting to anyone and dealing with matters internally), outcomes can fall short of protecting rights and being fair and non-discriminatory.

In addition, the content of the law and legal processes is also not familiar to many people, given a strong focus on criminal justice and punishment rather than rights protection. This means people often have low expectations of justice providers and are rarely a source of demand for improvements, although they complain openly about issues of corruption. Limited legal literacy, matched by widespread distrust in the police, also means that, even where the justice system functions as it should, this can be perceived as unfair. For instance, a police officer interviewed noted that, when an arrested suspect is released either on bail or because of a lack

of evidence, community perceptions are often that the police have been bribed to guarantee release, even where this is not the case. This underscores how people see justice as an outcome that adheres to popular ideas of right and wrong, rather than as a process that protects the rights of all parties involved in a dispute. Even more challenging for those working to strengthen justice outcomes in Myanmar is that people may not want the kind of justice outcomes that the international development community generally favours. The varied local understandings of justice and what people see it as helping them achieve can thus be an impediment to fair and non-discriminatory outcomes.

A lack of clarity regarding the functions, jurisdictions and decision-making processes of different justice providers also contributes to unfair justice outcomes. Starting with W/VTAs, while there is some clear agreement on cases that fall outside their jurisdiction (such as murder and rape), their general mandate is unclear and inconsistent. With seemingly no oversight of what cases W/VTAs are dealing with, higher authorities have no way of knowing what crimes or injustices are never making it beyond the community level. Connected to this is the limited training W/VTAs receive in support of their sizeable function in the community. W/VTAs we spoke with had attended between five and 15 days training upon their election. This is delivered by the township administration, drawing on a range of departments, and, in relation to administrators' dispute resolution role, covers an introduction to Union Laws, how to write formal correspondence and how to mediate disputes. Yet some of the W/VTAs we spoke with said they did not have copies of the Union Laws – although some had purchased copies of those most relevant to their communities, such as the Land Law. A question remains as to how W/VTAs can make decisions based on a combination of Union and village law/custom without having detailed knowledge of what constitutes Union Law. Village law, or custom, while generally understood by people in the community, also tends to maintain status quo power relations that can marginalise disadvantaged groups. W/VTAs could also not recall in any great detail what they had learnt about how to mediate. Given the centrality of W/VTAs to the resolution of the vast majority of disputes in Myanmar, this is an important area for further investigation.

W/VTAs frequently make decisions that aim to keep the peace rather than uphold justice. This is reinforced by their role as part of the GAD, focused on administration, not justice. This amplifies the W/VTAs' orientation towards maintaining peace and order, which is often at odds with dispensing justice. This is perhaps best seen in the discriminatory treatment of women and religious

*While they are certainly the most utilised justice provider, and frequently described as fair by community members, W/VTAs (and the household heads they oversee) can also act as a first line of defence in a discriminatory system of control that frequently denies justice to women, ethnic and religious minorities and LGBT people.*



minorities, who are expected to endure injustices – even violence – if this will avoid what is seen to be wider social upheaval. While they are certainly the most utilised justice provider, and frequently described as fair by community members, W/VTAs (and the household heads they oversee) also act as a first line of defence in a discriminatory system of control that frequently denies justice to women, ethnic and religious minorities and LGBT people.

The police and formal courts are also not exempt from concerns about the bounds of their functions and their capacity to perform them. According to respondents, the police frequently mediate disputes or injustices that should in fact have a formal investigation opened. We also heard of cases of township courts making decisions not in keeping with the remedies and penalties available to them. In one case, we heard about a rape of a minor case in which the judge at the Township Court determined that the girl should marry her attacker. This decision was later overturned on appeal but highlights that judicial decision-making can contribute to unfair justice outcomes.

Corruption is also a major barrier to fair justice outcomes. People at all levels claim justice is a commodity for sale. Some of this undoubtedly stems from poor pay and conditions. W/VTAs receive a stipend of MMK 70,000 per month (\$56) and feel they have an increased workload since the government removed the position of 100 household heads in 2012 (10 household heads remain) (Kyi Pyar Chit Saw and Arnold, 2014:

2). The police are stretched and there is limited support for what is a 24-hour, front-line service. Combined with low pay, this makes corruption tempting. The police are known to doctor statements and evidence to achieve the preferred outcome, abusing their position as law enforcers in a population where most people do not know their rights. Within the formal courts, payments to law officers, prosecutors, lawyers and judges can all enable a wealthier party to achieve their desired outcome. And, even where an initial justice outcome might be seen to be fair, a wealthier party can simply appeal to a higher level and attempt to 'buy' the result they want. People in Mon State claimed NMSP courts were fairer because corruption was less pronounced, although not entirely absent. It is difficult to imagine how justice can be (and can be seen to be) fair and non-discriminatory when corruption is rife at all levels.

The change in government has brought hope, but high expectations are also resulting in disappointment. According to one respondent, 'The new government built up expectations but nothing has changed.' Some people felt the introduction of elections for W/VTAs in 2012 had made a difference – although in most cases people simply felt their current administrator was an improvement on the previous one. It was unclear whether this owes to the introduction of elections, wider political changes in the country or other factors. Many of the administrators in the areas we visited were in place prior to elections, or else those with money and cronies had been elected, highlighting that democracy is not necessarily a guarantee of fairness. However, a number of administrators noted that, since elections were introduced, they had had to alter their behaviour so that people did not complain about them, hinting at the early signs of a potential accountability mechanism. In Yangon in particular, people indicated that they felt the police were improving – being less aggressive and more courteous with community members. But improving police capacity and performance, weeding out corruption and building public trust will be a long-term endeavour.

Outcomes are particularly unfair for women, who face a justice system that reinforces the patriarchal norms of wider society. Vulnerable groups like MSM and sex workers do not dare to seek justice through a system they see as being there to criminalise, rather than protect, them. Religious and ethnic minority groups also face distinct discrimination. While we heard from majority groups and justice providers that ethnic and religious minorities receive a fair hearing, minority groups themselves felt this was true only where a

*Minority groups... have both more constrained dispute resolution options available to them and less chance of receiving fair outcomes when they do access them.*



dispute was between two parties of the same minority group (for instance between two Muslims). Where a dispute is between a minority group and the majority group, minorities do not feel they can achieve a fair outcome. In addition, minority groups' use of justice mechanisms appears limited. While administrators said they deal with disputes from everyone within their communities, few could think of a recent example of minority groups bringing a case to them. Minority groups thus seemingly have both more constrained dispute resolution options available to them and less chance of receiving fair outcomes when they do access them.

In the face of these unfair and discriminatory justice outcomes, people appear at least somewhat satisfied with the justice avenues available to them. While the police and court systems are rarely used, community members in over half of the communities in Mon State and virtually all of the communities in Yangon felt the W/VTA was generally fair. For all their short-comings, people feel administrators provide a degree of certainty, generally make their decisions in accordance with local customs that people understand and resolve matters quickly. While many of the justice outcomes might not be considered fair and non-discriminatory by international standards of justice, stoking demand for change will be challenging.



Ward Administrator, Dala Township, Yangon Region, August 2016

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# 7. RECOMMENDATIONS AND WAYS FORWARD

*There are significant justice challenges in Myanmar and a correspondingly wide range of programming options that justice programmes could pursue. This final section sets out some considerations to inform efforts to improve the quality of justice, followed by suggestions for potential entry points.*

## DON'T RELY ON STATE-BUILDING

**The recommendations made here should be caveated by recognition that access to justice tools are often used in fragile state contexts where state-building is the aim – either explicitly or as an underpinning normative drive (and where state-building is generally understood as being about – or is reduced to – improving government capacity to deliver services).** Given ongoing political contests in Myanmar and competing sources of power and service delivery, who and what donors support in justice reform will have ramifications for local configurations of power and is thus deeply political. External actors should be conscious of not defaulting to a state-building approach, which is especially sensitive in Myanmar given ongoing transitions. It is important to keep this in mind in devising approaches to justice reform so that donors avoid doing harm. It is important to keep this in mind in devising approaches to justice reform so that donors avoid doing harm.

## BE REALISTIC

**There is a need to be realistic about what externally led programmes can achieve.** Improving the quality of justice and creating a fairer and more inclusive society depends on Myanmar's wider unfolding transitions, over which donor programmes have little control. Central to these transitions is how power is negotiated between the military and the NLD. Given that key actors within the justice system remain under military control, their openness to change will have a determining impact on the orientation of justice. In addition, in mixed or EAO authority areas, the ongoing peace process and

discussions of federalism will heavily influence how people access justice and view available providers. Keeping abreast of how such transitions unfold, the opportunities and roadblocks this presents and how programming adapts will be key to ensuring relevance and conflict sensitivity. In addition, the growing interest in rule of law in Myanmar means there will likely be a range of actors working in this space, making coordination and coherence vital.

## WORK WITH THE GRAIN OF EXISTING PRACTICES AND UNDERSTANDINGS OF JUSTICE

**Thinking through problems and the role of donor programmes in addressing them raises a question as to whether access to justice tools can help.** Here, it is important to make sure programmes do not simply default to a reliance on a standard set of interventions that they are habituated to provide, without interrogating whether they are actually likely to be helpful in the Myanmar context. People in Myanmar have become adept at coping with the problems they face in a range of ways (including by internalising problems and not seeking external assistance). This report has set out many of the justice facilitators and providers that people utilise. It should not be assumed, therefore, that Myanmar's justice problems can be resolved by establishing new processes and institutions that adhere to external ideas of justice. Much more important is investing in understanding the complex and varied ways in which people already think about and resolve disputes and injustices. Access to justice tools may be able to work with, expand or improve these existing processes, but this needs to be carefully considered and set out in any programme assumptions and theories of change.

Given low levels of reporting of many disputes and injustices, it is clear there is a need for improved knowledge of rights, the law and legal process among citizens. Legal literacy is low and without stoking this it is hard to imagine how greater reporting to the broad range of justice providers will come about. However, there is also need for caution in how this is done. The concept of justice in Myanmar official discourse has strong law and order connotations. Simply raising awareness about 'justice' and its importance could in fact lead to a strengthening of this law and order approach, without critically engaging with it. This raises risks of actually doing harm. Moreover, a lack of reporting not only is a matter of legal awareness-raising but also speaks to deeper issues of how justice

is understood and to trust in providers. A better place to start, therefore, would be to broker community conversations about what justice means and what role it can play in Myanmar's future. Similarly, discussing what rights are, how they sit alongside responsibilities and how people can use the law to exercise and protect them could help challenge ideas of justice being about 'making big cases small, and small cases disappear'. Of course, this is a long-term process of shifting societal attitudes and will face resistance from those who perceive such discussions to disrupt social harmony. Working in support of locally legitimate and trusted actors is thus key to ensuring changes are locally relevant and owned, rather than imposed or perceived as an affront to religion and culture.

This should not imply that understandings of justice need to shift towards a preference for formal-legal processes and the often-punitive approaches these entail. Aside from there being significant value in mediation and reconciliatory justice approaches, these are also simply the empirical reality for much dispute resolution in Myanmar. This reality should be worked with, not against. Here, there is significant space for working with a range of the justice facilitators and providers that the justice chains set out here show as being most relevant to people at the local level, including CBOs, 10 household heads and elders. In this way, the desire for social harmony can also be harnessed in positive ways, while working towards greater non-discrimination and rights protection. Efforts to improve the quality of justice should focus on making all available mechanisms fair, rights-protecting and responsive to heterogeneity of need, rather than about privileging certain providers over others.

In this vein of working 'with the grain,' efforts to improve local experiences of justice cannot avoid working with the W/VTAs. This might be by engaging them directly or by working through the township administration – which supervises the W/VTAs and carries out training. There are pros and cons to each approach. Working with W/VTAs would be politically easier, have a more direct community impact and take advantage of relatively newly elected community representatives, connected to wider democratisation processes. Yet the geographic coverage would necessarily be limited and sustaining changes could be difficult beyond the term of particular W/VTAs. Working through the township administration would require more political negotiation and has some risks of reinforcing the power of military appointed administrators. Effects at the community level would likely be harder to ascertain. However, achieving changes at this level could mean W/VTA practices change across wider

geographical areas and are sustained beyond the terms of particular W/VTAs. In deciding which approach is most appropriate, consideration must be paid to the feasibility and assumptions inherent in each. For instance, is W/VTA practice at community level in fact sufficiently influenced or directed by the township administration, such that changes in policy or approach at this level would in fact influence community practice? Such factors require further consideration.

In relation to the formal justice system, if people are to access it relations with the police need to improve (for planned work in this regard see EU, 2014). Efforts to build police–community relations could be pursued, cognisant of the potential dangers of working with police in strong state contexts, where improving police networks at the local level can be antithetical to improving justice if they are used to harvest information rather than identify opportunities for meaningful and collaborative justice work. Such work must begin by testing the appetite within the police, for instance through discussions around what their challenges are in delivering access to justice and where assistance or improvements might be needed. Without appetite for reform within the police, engagement would deliver limited impact.

## WORK WITH PLURAL JUSTICE PROVIDERS

**It would not be viable to work on justice in EAO or mixed authority areas without engaging with EAO justice systems.** In Mon State, it was clear these were widely used and often more trusted than the alternatives. Given the importance of acknowledging legal pluralism, it would be remiss for justice programming to focus solely on formal state systems (The Asia Foundation, forthcoming). While in EAO and mixed authority areas it makes sense to work with EAO courts in their own right, opportunities might also be found in building relations between state and EAO courts, connected to wider political negotiations. Entry points might be found by working with locally trusted organisations to build relationships and understanding of the range of locally relevant justice actors. Over time, this might move towards bringing state, EAO and other justice providers together in forums on issues of mutual concern to facilitate relationship-building, paving the way to more sustained engagement. Collaborations could focus on agreeing standard procedures for dealing with less politically sensitive issues – such as debt disputes and rape of minor cases. Working through locally rooted CBOs and networks would be important to ensure a deep understanding of the micro-level context is integrated.

## TAKE A PROBLEM-DRIVEN APPROACH

**While the above justice institutions are clearly central to the way people experience (in)justice, given growing evidence that generic institutional strengthening delivers limited dividends, and given the plethora of justice issues in need of improvement, a more fruitful approach might be to focus on a strategic selection of key justice problems.** Justice facilitators and providers could then be engaged through the lens of particular justice problems. This focus offers increased potential for achieving tangible changes in a few key areas, and is in keeping with wider shifts towards ‘problem-focused’ approaches to reform (Fritz et al., 2009; Bennett, 2016). Numerous problems for engagement are apparent and the challenge is prioritising among them. This might be done in a variety of ways – selecting problems most amenable to being solved, including because of support for change among key local stakeholders, or the most pernicious problems. In practice, some combination of the two is likely necessary to balance between changes that are realistically achievable and those that are longer term and difficult but nonetheless of great importance (discrimination likely falls in this category). Prior to engaging, it is important to think about how change might realistically happen in relation to different problems within the Myanmar context and, given that, where and how donor programmes might usefully play a role. There will be some change processes where the tools and levers available to donors will be unhelpful. Recognising this is important in ensuring programming is not only well intentioned but also effective. Potential problems to focus on are set out below.

- **Land:** There is clearly a need to address the ‘stacked’ laws and clarify the legal and administrative pathways for people to reclaim land and protect property rights. This is an area with a heavy concentration of donor interest. Moreover, it is highly politically sensitive, which may make it a difficult starting point for programming. Given the importance of achieving buy-in from key parts of government and the need to transform wider governance if justice is to be sustainably improved, choosing to work on such a politically sensitive issue may close more doors than it opens. That being said, there may be niche areas within the broad category of land disputes that could be focused on – such as squatter rights or improving knowledge and understanding of the avenues for pursuing land claims. Inevitably, justice programming will be just one element in addressing problems of land reform.
- **Debt disputes:** Disputes related to debts were the most commonly heard about, affecting large numbers of people, with the poor and marginalised most negatively impacted. This also has the benefit of not being as politically sensitive as some other areas, making it a viable entry point. There are also a range of relatively practical steps that could be taken – such as developing a standard and simple contract that would offer protections to both lenders and borrowers and enable disputes that arise to be adjudicated; working with microfinance organisations to develop documentation requirements that are sensitive to the realities of poor and marginalised communities; and strengthening the collective bargaining of poor and vulnerable communities to access fair credit. This could potentially not just address a justice issue but also deliver more equitable development dividends.
- **Labour disputes:** As Myanmar continues to industrialise, labour disputes will likely become a bigger issue. New labour laws have introduced some important protections for workers but they are rarely known and poorly understood. Moreover, the ability of labourers to hold management to account for these standards is limited. There is ample room to work with women, labour unions, township administration and factories in improving justice for workers, in collaboration with non-justice specialists already working in this area. This could have health, safety and developmental dividends, in addition to rights and justice dividends.
- **Discrimination:** Justice programming cannot avoid the engrained and often unrecognised discrimination against a wide range of groups in Myanmar. Work could focus on repealing or amending specific laws that legalise discrimination (such as Section 377 of the Penal Code, which criminalises same sex sexual activity). Alternatively, the programme could seek to address some of the barriers to ethnic minorities accessing the formal justice system, by ensuring translators are available in courts (they are meant to be in theory but are often not in practice). The programme could also focus on the centrally important issue of identity cards, the denial of which to Muslims, some Hindus and migrants can have grievous flow on effects on their rights. Discrimination is also a potential conflict trigger and is thus a priority issue. Working with the Immigration Department to find ways of streamlining identity card application processes and ensuring people are aware of the rights conferred by their citizenship status are potential entry points.

- **Violence against women and children:** Violence against women and children is a large-scale problem. A range of CBOs already work on such issues and efforts in this area should connect with these. Domestic violence, related to alcoholism, is particularly widespread. While alcoholism as a driver of domestic violence is an international phenomenon, it is surprising how little programming engages with issues of alcohol, and justice work in Myanmar could address this. Efforts to reduce violence against women should also engage men. Rape of minors is an area that could be an effective entry point into engaging with the justice sector, given that there is a generally shared repulsion at the crime and a resultant willingness to cooperate to prosecute such cases across W/VTAs, police and the government and NMSP court systems. This could form the basis for discussions about how the justice sector operates and act as a launch pad for discussing more sensitive issues.
- Innumerable other problem-focused ideas stem from this research. What is set out here is an effort to record potential entry points across a range of areas that flow from the nature of disputes commonly experienced; the ways in which people seek to resolve them and the factors they consider in so doing; and the deficit of fairness and non-discrimination in Myanmar's justice system.

## INVEST IN ONGOING LEARNING

**Finally, this research points to a range of areas that would benefit from further research.** Key among them is deepening understandings of how Buddhist beliefs about dealing with problems internally influence local conceptions of justice, given the role this seems to play in deterring reporting. Similarly, building a more nuanced understanding of debt disputes and what recent laws mean for the widespread practice of informal lending would help in addressing disputes that affect large numbers of people. Deeper knowledge is also required of EAO justice processes, including to investigate potential entry points for working with them. More broadly, the questions raised by this research speak to the fundamental importance of building greater knowledge of local understandings of justice and justice-seeking behaviour in Myanmar. This requires an ongoing process of learning given variation across the country, as well as the state of flux that characterises many aspects of justice.

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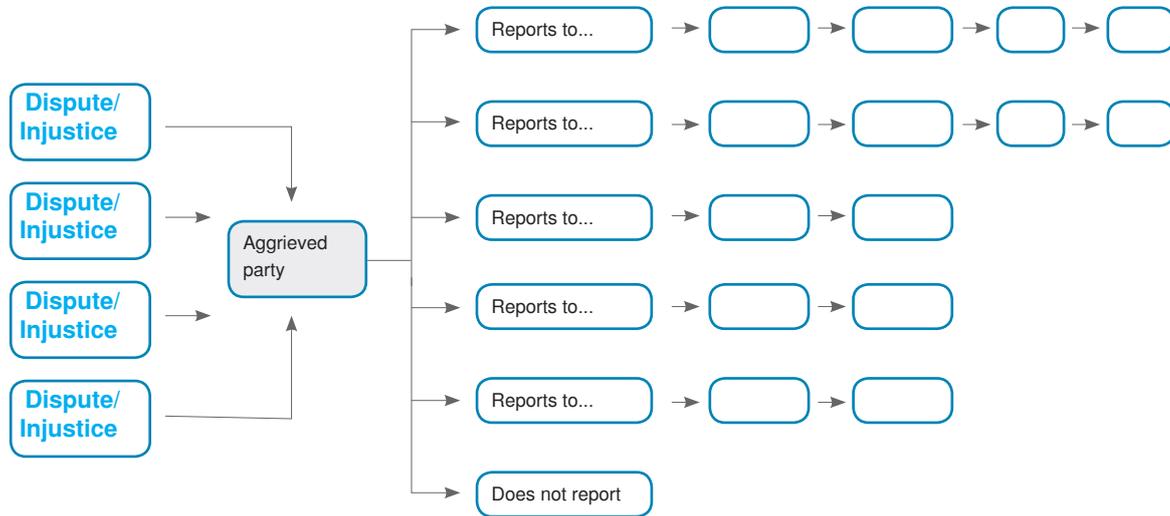
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# ANNEX 1:

## JUSTICE CHAIN TEMPLATE



# ANNEX 2:

## INTERVIEW GUIDES

*For focus group discussion (men and women separately):*

### **Nature of disputes:**

- Can you tell us about life in this community? What groups of people live here? What are most people's livelihoods? What challenges does the community face?
- What are the main disputes or justice problems in this community?
- Who is most likely to experience these disputes?
- Are they new or long-standing?
- What types of legal issues are women facing here? Are there some issues that women do not usually report? Why?
- Do different religious or ethnic groups face particular justice challenges? Why?

### **Possible resolution mechanisms and how decisions are made about which to use:**

- What are the options that exist in this community to resolve a dispute?
- Where do you go to resolve disputes?
- Where do women/men go to resolve disputes? (Why different?)
- Do different religious/ethnic groups resolve disputes through different mechanisms? Why?
- Do you go to different people/resolution mechanisms depending on the issue?
- How do you decide where to take a dispute? (Prompts: Trust in provider /Accessibility / Affordability /Previous experience /Likely outcome / etc.)
- Has this changed over time? Are the providers you would go to now the same as you would have gone to 5 years ago? Why? [eg: W/TVAs more or less used now they are elected?]
- What challenges do you face in accessing dispute resolution services?
- Why don't people go to the police and township courts [if it emerges they don't]?
- Are the police and township courts changing? In what ways?
- How much does it cost to have a dispute resolved?

### **Key actors in resolution mechanisms:**

- Who are the main people involved in resolving disputes/injustices in this community?
- Who do you speak to first if you have a dispute? Why?
- Process of resolution mechanisms:
- Who decides to submit a case for resolution?
- Who is involved in submitting the case?
- What is the process that then unfolds? [further prompts may be necessary to follow process]
- Do you feel this process is fair? Why/why not?

### **Outcomes of resolution mechanisms**

- What are your perceptions of these mechanisms (take each in turn if there are many)?
- Do you feel these mechanisms enable people to achieve justice? Why/why not?
- What prevents justice from being achieved?
- If the mechanism/process is seen as fair, does it make the outcome more acceptable for the losing side?
- Is it easier for some people to achieve justice than others? Who? Why?
- If someone is unhappy with the justice outcome, what can they do? If they are still unhappy?
- What would improve your access to justice in this community?

### **For KIs with community members who have personal experience of justice mechanisms:**

- What was the nature of your dispute?
- Who did you consider going to to resolve this matter?
- What challenges did you face in accessing different resolution mechanisms?
- Who did you ultimately take the dispute to?
- Why did you decide to go to this provider?
- How did resolution of the matter proceed?
- Did you feel the process was fair? Why/why not?
- Did you trust the process/believe in its fairness?

- Did you trust the 'decision-maker'? believe in his/her authority/capacity to have fair judgement?
- What was the outcome?
- Did you feel the outcome was fair? Why/why not?
- Did you have to pay a fee or donation for this service?
- Did you feel that your identity (gender, ethnicity, religion, class, etc.) impacted on the process of outcome? Why?
- How do you think access to justice could be improved in such cases in future?

***For KIIs with providers of dispute resolution/justice services (elders, religious leaders, CBO, MPs):***

- Can you tell us about life in this community? What groups of people live here? What are most people's livelihoods? What challenges does the community face?
- What role do you play in resolving disputes or settling injustices in this community?
- Why do people come to you?
- What are the types of disputes that are brought to you?
- Who are the other providers of dispute resolution that people might go to?
- How much do people have to pay to resolve disputes amongst the different providers?
- How do they decide where to take a particular dispute?
- Do you deal with disputes from a particular group in society or everyone (eg: men/women; different ethnic or religious groups, etc.)?
- What do you do when someone brings a dispute to you? [Might need to go through different kinds of disputes]
- How do you make a decision about the outcome? What factors do you consider?
- How do the disputants normally react to the outcome?
- If someone is unhappy with the outcome, what can they do?
- What happens if they are still unhappy?

# ANNEX 3:

## LIST OF FOCUS GROUP DISCUSSIONS AND INTERVIEWS

Interview with 2 retired judges, Yangon  
Interview with retired judge, Yangon  
Interview with 2 retired law officers, Yangon  
Interview with former member of parliament, Yangon  
Interview with police officer, Yangon  
Interview with NMSP spokesperson Ye Town, Ye Township, Mon State  
Interview with Myat The Thitsar and Myat Thet Thitsar, Enlightened Myanmar Research, Yangon  
Interview with Ye Yinth and Tim Millar, Namati, Yangon  
Interview with Myat Ko Ko and Supatra Basham, Justice Base, Yangon  
Interview with Vanessa Johansen and Steve Hege, United States Institute of Peace  
Interview with Matthew Arnold, The Asia Foundation, Yangon  
Interview with Helene Kyed, Danish Institute of International Studies and Annika Pohl Harrison, Aarhus University, Yangon  
Interview with Sue Mark, Pyoe Pin Programme, Yangon

### **Mying Thar Yar Ward, Mawlamyine Township, Mon State**

Focus group discussion with 6 women  
Focus group discussion with 8 men  
Interview with village elder  
Interview with women's CSO project coordinator  
Interview with Mon Women's Organisation representative  
Interview with woman with experience of dispute

### **Min Ywar Village Tract, Mawlamyine Township, Mon State**

Focus group discussion with 15 women  
Focus group discussion with 5 men (all 10 and 100 household heads)  
Interview with woman with experience of dispute  
Interview with woman with experience of dispute

### **Mu Yuang Village Tract, Mawlamyine Township, Mon State**

Focus group discussion with 6 women  
Focus group discussion with 8 men (5 were 10 and 100 household heads)  
Interview with elder  
Interview with Hindu woman  
Interview with Muslim woman

### **Kawt Hnut Village Tract, Mawlamyine Township, Mon State**

Focus group discussion with 6 women  
Focus group discussion with 12 men  
Interview with CSO representative  
Interview with young Mon Buddhist woman

### **Ka Toe Village Tract, Mawlamyine Township, Mon State**

Focus group discussion with 6 women  
Focus group discussion with 12 men  
Interview with VTA  
Interview with 6 10 and 100 household heads  
Interview with two Muslim women

### **Thiri Mying Ward, Mawlamyine Township, Mon State**

Focus group discussion with 12 women  
Focus group discussion with 8 men  
Interview with elder  
Interview with 2 Buddhist monks  
Interview with 10 household head  
Interview with woman with experience of dispute

### **Ya Myo Aung Ward, Ye Township, Mon State**

Focus group discussion with 11 women  
Focus group discussion with 16 men  
Interview with man with experience of dispute  
Interview with man with experience of dispute  
Interview with young woman

### **Yin Yei Village Tract, Ye Township, Mon State**

Focus group discussion with 6 women  
Focus group discussion with 12 men  
Interview with Buddhist monk  
Interview with Village Administrator  
Interview with woman with experience of dispute  
Interview with youth CBO representative

### **Kyaung Ywar Village Tract, Ye Township, Mon State**

Focus group discussion with 5 women  
Focus group discussion with 15 men  
Interview with Village Tract Administrator  
Interview with woman with experience of dispute  
Interview with Christian leader  
Interview with 3 local human rights CBO representatives

**Aung Minglar Ward, Ye Township,  
Mon State**

Focus group discussion with 11 women  
Focus group discussion with 7 men  
Interview with 7 Muslim men  
Interview with 2 men with experience of dispute  
Interview with Hindu woman  
Interview with woman with experience of dispute  
Interview with 2 Muslim leaders

**Du Yar Village Tract, Ye Township, Mon State**

Focus group discussion with 6 women  
Focus group discussion with 18 men  
Interview with Village Tract Administrator  
Interview with elder  
Interview with woman with experience of dispute

**An Din Village Tract, Ye Township,  
Mon State**

Focus group discussion with 19 men  
Interview with Village Tract Administrator  
Interview with Buddhist monk

**Danode Village Tract, Dala Township,  
Yangon Region**

Focus group discussion with 10 women  
Focus group discussion with 16 men  
Interview with Village Administrator  
Interview with NLD village chairmen  
Interview with woman with experience of dispute  
Interview with woman with experience of dispute

**Thabyay Gone Village Tract, Dala Township,  
Yangon Region**

Focus group discussion with 9 women  
Focus group discussion with 17 men  
Interview with Village Administrator

**11-14 Ward, Dala Township,  
Yangon Region**

Focus group discussion with 14 women  
Focus group discussion with 13 men  
Interview with Village Administrator  
Interview with Chairperson of the Maternal and Child Welfare Committee  
Interview with 10 household head  
Interview with Hindu woman  
Interview with Muslim woman  
Interview with woman with experience of a dispute

**Myo Ma Ward, Dala Township,  
Yangon Region**

Focus group discussion with 6 women  
Focus group discussion with 12 men (5 who were elders or household heads)  
Interview with Village Administrator  
Interview with NLD Township Representative  
Interview with gay man  
Interview with MSM  
Interview with woman with experience of dispute

**Ward 8, Hlaing Thar Yar Township,  
Yangon Region**

Focus group discussion with 7 women  
Focus group discussion with 13 men  
Interview with Hindu man who is a household head  
Interview with 2 female sex workers

**Ward 12, Hlaing Thar Yar Township,  
Yangon Region**

Focus group discussion with 7 women  
Focus group discussion with 10 men  
Interview with Village Administrator  
Interview with 3 MSM

**A Lae Gone Ward, Hlaing Thar Yar Township,  
Yangon Region**

Focus group discussion with 6 women  
Focus group discussion with 13 men  
Interview with Village Administrator  
Interview with woman with experience of dispute  
Interview with President of Women and Children's Committee  
Interview with 3 male sex workers

**Shwe Linpan Ward, Hlaing Thar Yar Township,  
Yangon Region**

Focus group discussion with 4 women  
Focus group discussion with 14 men  
Interview with political party representative  
Interview with Factory Labour Union President

**Ward 15, Shwepyithar Township,  
Yangon Region**

Focus group discussion with 5 women  
Focus group discussion with 14 men  
Interview with 2 Christian women  
Interview with Muslim couple

**Ward 16, Shwepyithar Township, Yangon Region**

Focus group discussion with 9 women

Focus group discussion with 9 men

Interview with Village Administrator

Interview with Hindu man

Interview with Muslim man

Interview with Hindu woman

**Ward 19, Shwepyithar Township, Yangon Region**

Focus group discussion with 7 women (all unregistered migrants)

Focus group discussion with 10 men

Interview with Ward Administrator

Interview with 2 Hindu men

Interview with unregistered migrant

**Ward 20, Shwepyithar Township, Yangon Region**

Focus group discussion with 6 women

Focus group discussion with 12 men

Interview with Village Administrator

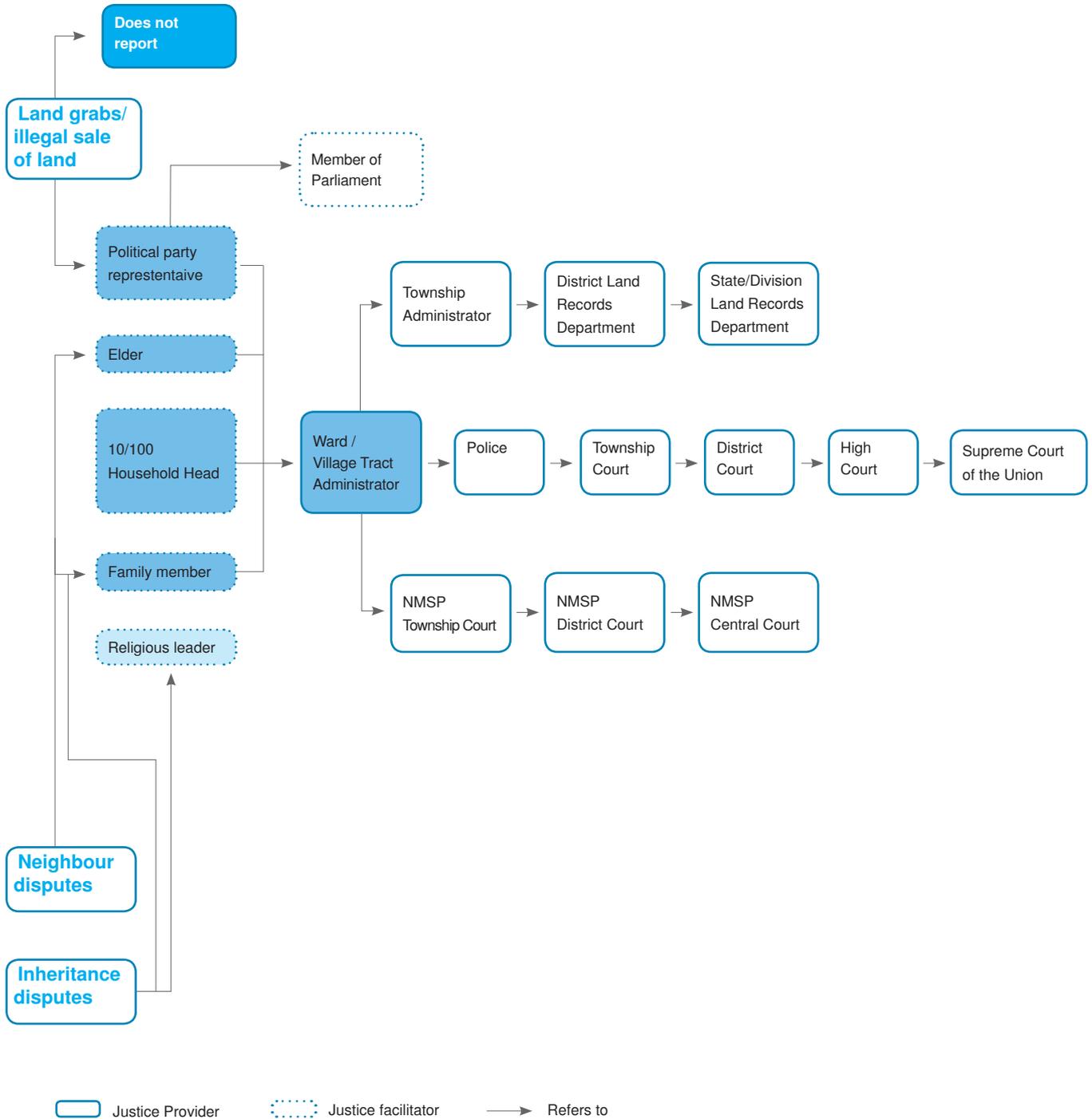
Interview with 2 Christian leaders

Interview with 2 Muslim women and Muslim man

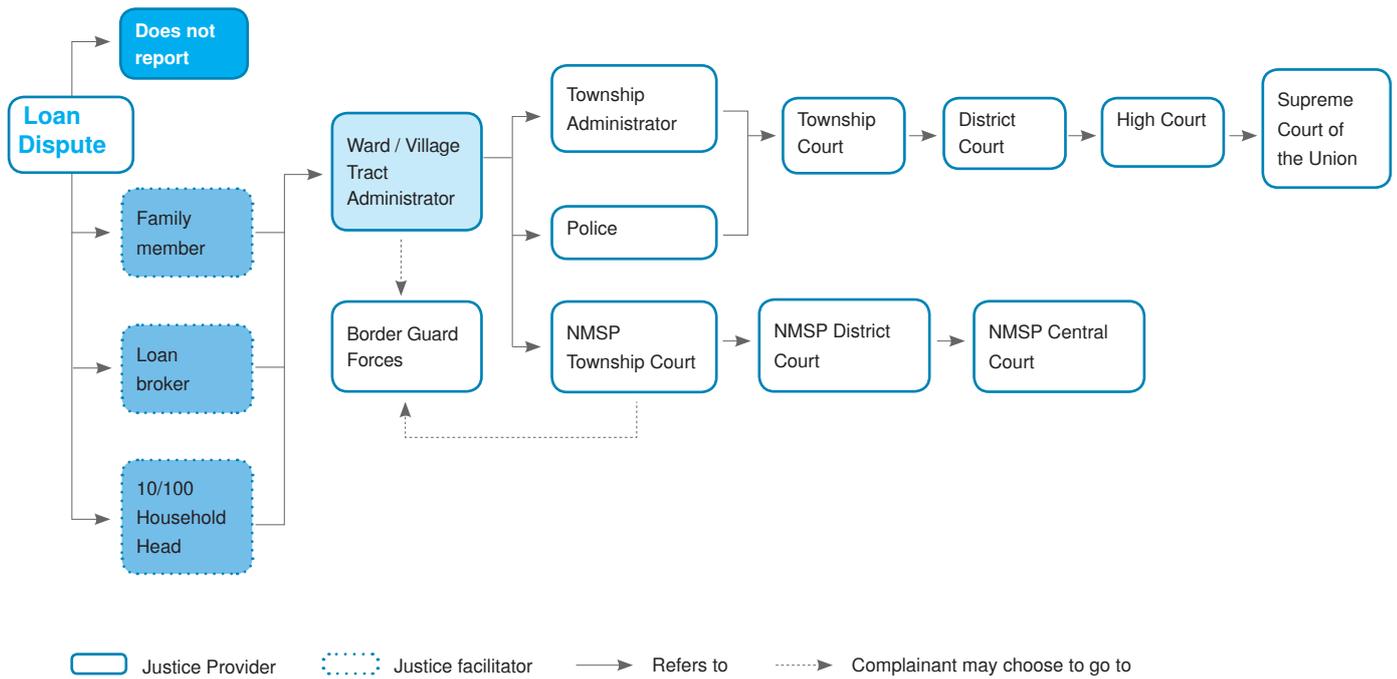
# ANNEX 4:

## JUSTICE CHAINS BY DISPUTE

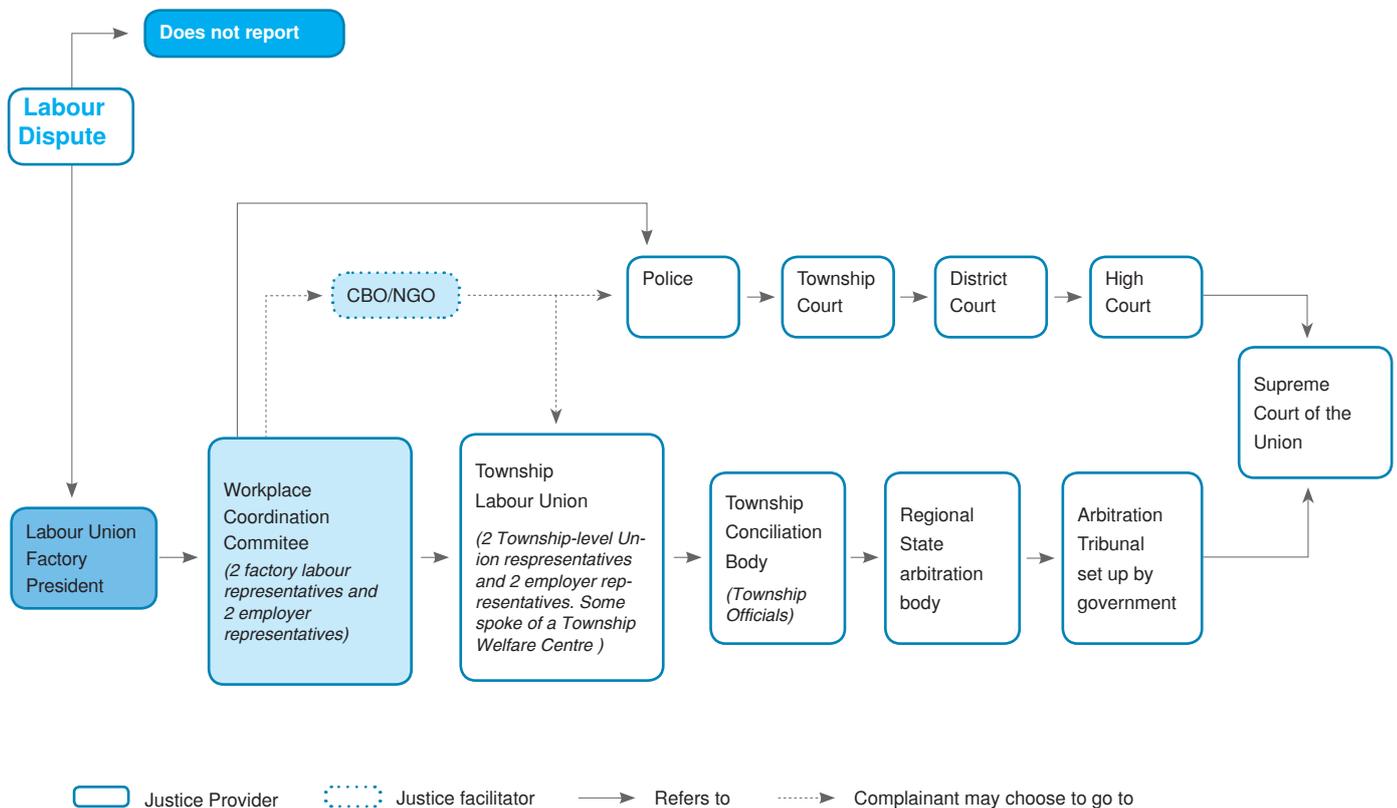
### Land Disputes



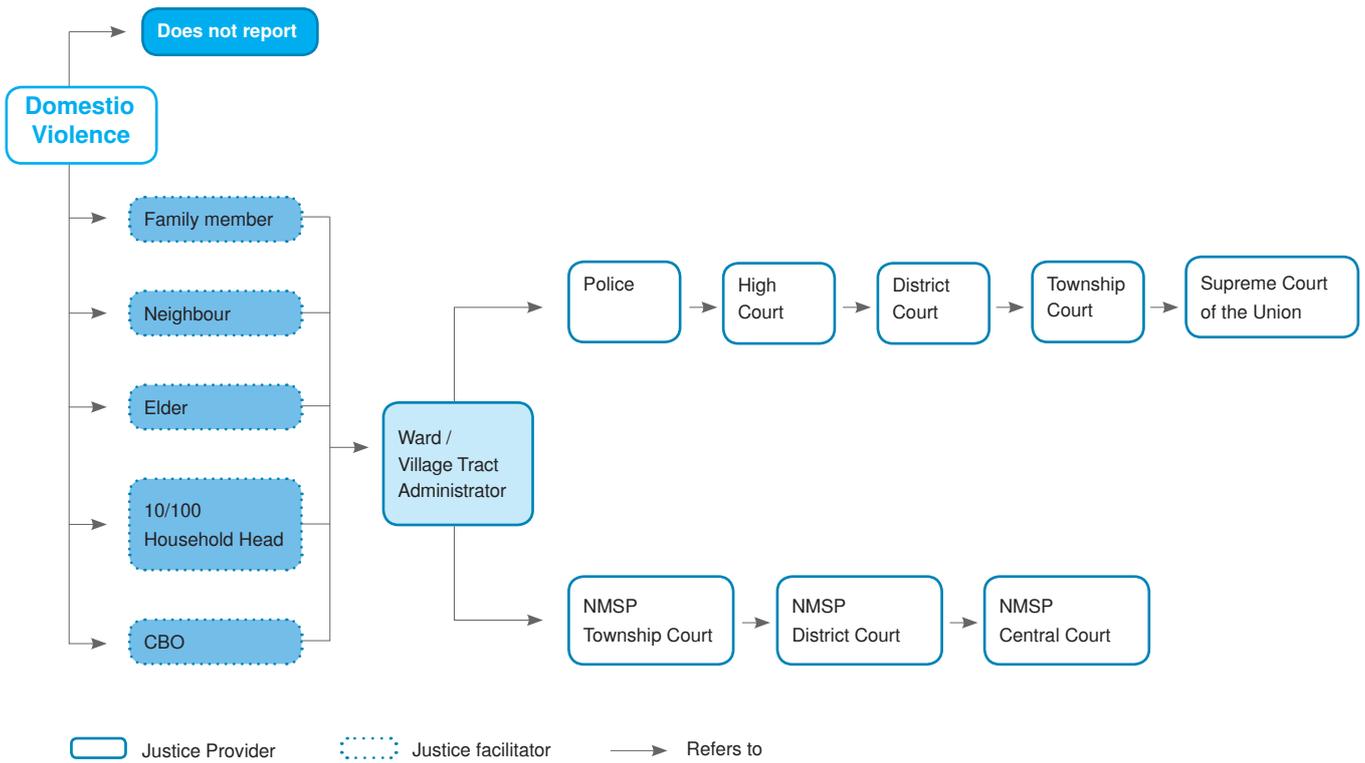
## Debt disputes



## Labor disputes



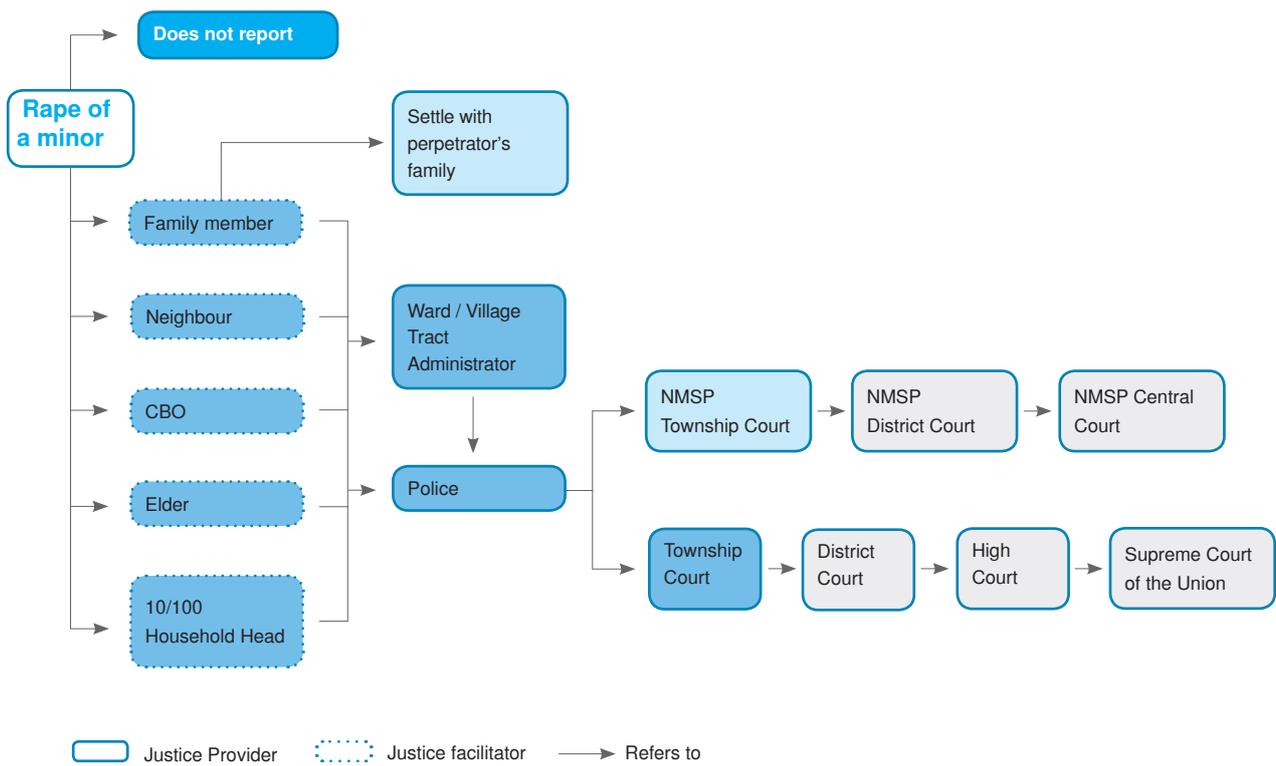
## Domestic violence



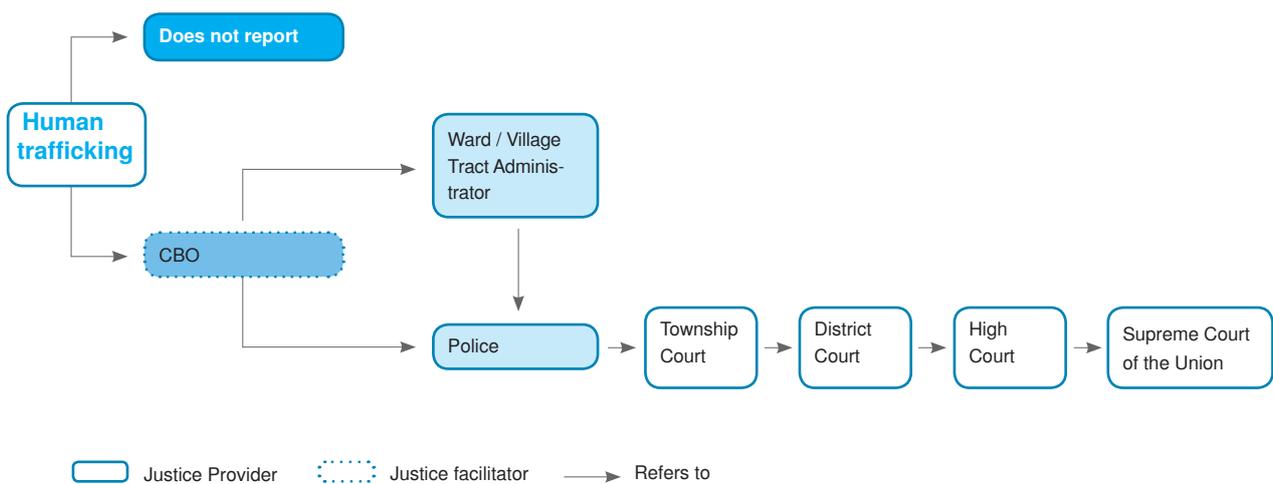
## Abandonment



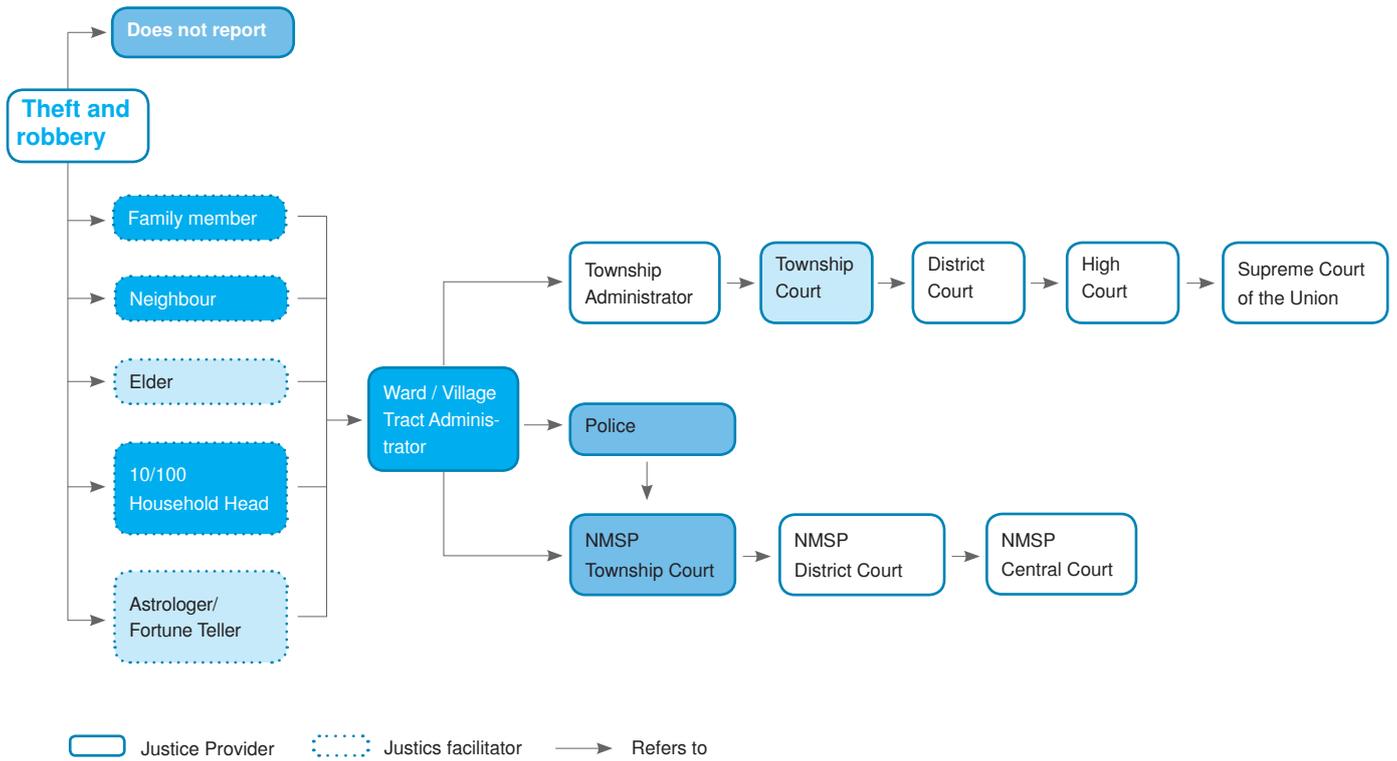
## Rape of a minor



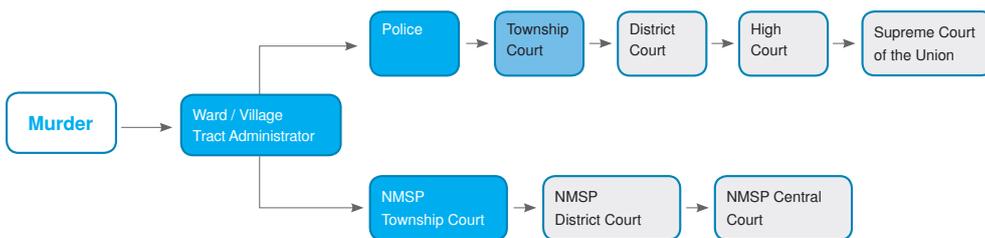
## Human Trafficking



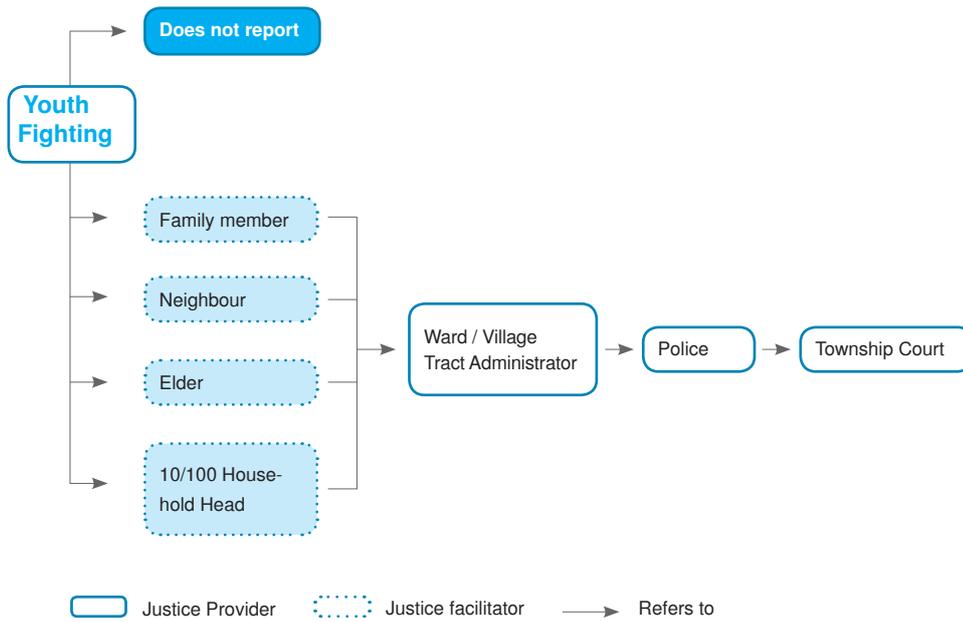
## Theft and robbery



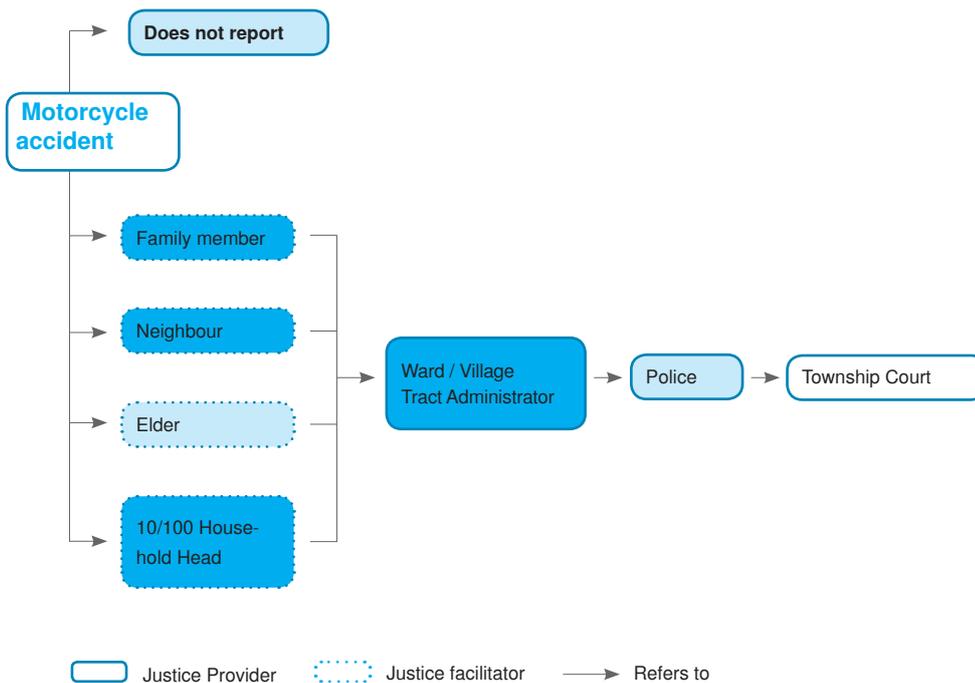
## Murder



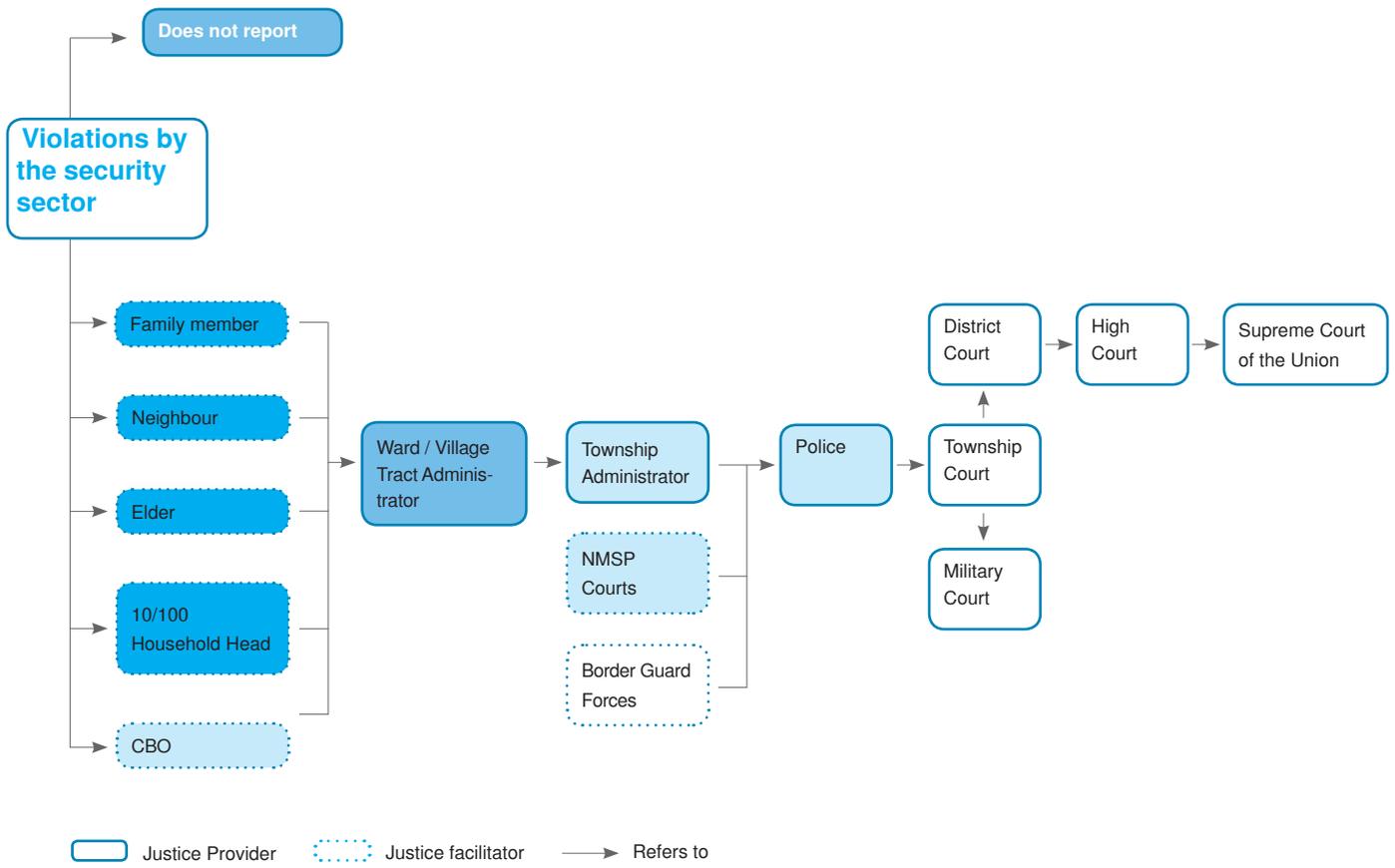
## Youth fighting

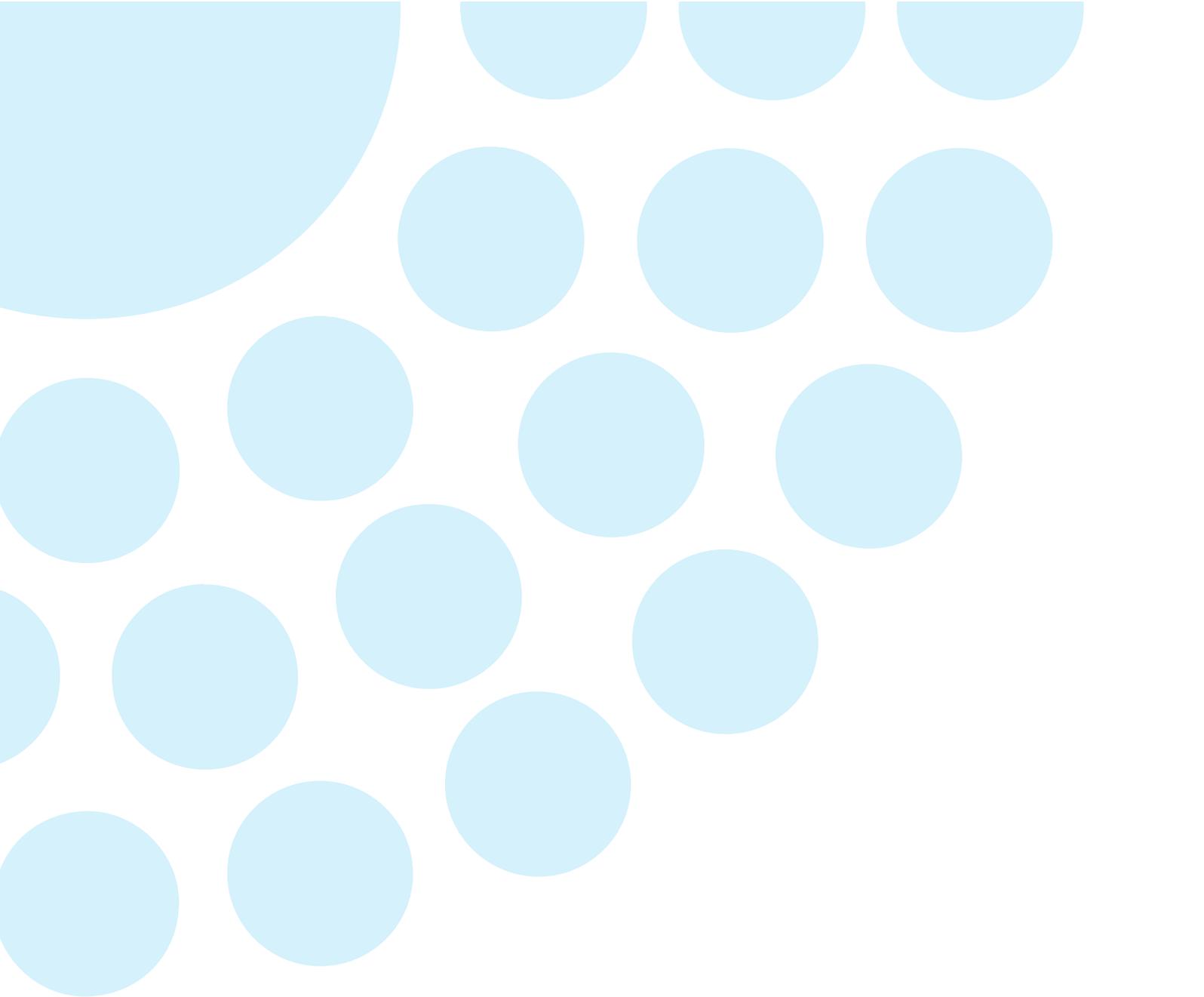


## Motorcycle accident



## Violations by the security sector





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