VOICES FROM THE INTERSECTION:
Women’s Access to Justice in the Plural Legal System of Myanmar
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Voices from the Intersection: Women’s Access to Justice in the Plural Legal System in Myanmar

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VOICES FROM THE INTERSECTION: WOMEN’S ACCESS TO JUSTICE IN THE PLURAL LEGAL SYSTEM IN MYANMAR
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ACRONYMS

ASEAN  Association of Southeast Asian Nations
CBO    Community Based Organization
CEDAW  Convention on the Elimination of All Forms of Discrimination against Women
CRC    Convention on the Rights of the Child
IBAHRI International Bar Association’s Human Rights Institute
ICHRP  International Council on Human Rights Policy
IDP    Internally displaced persons
LGBT   Lesbian, Gay, Bisexual and Transgender
KIO    Kachin Independence Organization
MWAF   Myanmar Women’s Affairs Federation
NGO    Non-governmental organization
NLD    National League for Democracy
NMSP   New Mon State Party
OAG    Office of the Union Attorney General
SLORC  State Law and Order Restoration Council
SPDC   State Peace and Development Council
UNICEF United Nations Children’s Fund
UNDP   United Nations Development Programme
UNFPA  United Nations Population Fund
UNSCR 1325 United Nations Security Council Resolution on Women, Peace and Security
USDP   Union Solidarity and Development Party
VTA    Village Tract Administrator
ACKNOWLEDGMENTS

Justice Base gratefully acknowledges that the stories and cases presented herein are the result of the generous participation of women and men in communities in Mon State, Kachin State, Chin State and the city of Yangon.

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The participatory nature of this research design relied upon regular and thoughtful feedback, consultations and analysis provided by key stakeholders and peer organizations. Without the gracious input and involvement offered by women’s rights activists, civil society actors, legal practitioners and experts, parliamentarians, local community leaders and heads of religious groups in each of the project’s target areas, this report would not have been possible.

Finally, thank you to the Justice Base team for your guidance, research efforts, vision, and administrative support throughout the project.
EXECUTIVE SUMMARY

Justice Base, with support from UN Women, led a participatory action research project over eight months in 2014 to examine women’s access to justice in the plural legal system of Myanmar. Situated in the constellation of various justice studies being conducted in the country, this report places fundamental importance on documenting women’s experiences with and perceptions of the formal and informal legal systems.

Researchers sought to identify the formal and informal processes, decision-makers, and institutions that play a role in resolving disputes involving women in Myanmar. In communities with little access to government legal institutions or where the formal system is not used or not functioning, the project emphasised recording customary legal processes and how they impacted women’s justice claims. The intent was not to determine which system was “better” or more favourable to women, but rather to illuminate the justice obstacles and enablers in each.

This qualitative study was conducted in four geographic target areas that included urban and semi-rural areas of Chin State, Mon State, Kachin State and the city of Yangon. Local research teams used focus group discussions, key informant interviews and participatory mapping activities to collect information from over 400 community members, legal practitioners, local administrators and other key stakeholders. Consultations and data validation sessions were iteratively held with partner organisations to further ensure that women and peer groups could articulate their positions and preferred strategies for improving their access to justice.

The project did not focus on specified thematic issues (for example, land rights or domestic violence), but rather provided a broad space for women and men from target communities to self-identify what they saw as women’s most pressing legal concerns. Research participants identified domestic violence, sexual assault and traditional inheritance practices as the most prevalent injustices women faced. Women also described these issues as the least likely to be submitted for adjudication by formal or informal legal mechanisms. The avoidance of justice systems in response to these events was explained in part by several women and men respondents who defined family matters – those between a husband and wife or parents and children – as situated outside the jurisdiction of law.
Researchers found that many women and families still chose traditional dispute resolution mechanisms for most cases due to the persistence of long-held, widespread distrust of the state legal system and complaints about its high costs, corruption, gender bias, lengthy trial delays and language barriers for ethnic minorities who are non-Myanmar language speakers. This pervasive resistance to formal legal institutions highlighted the need for access to justice programming to reach beyond the formal system to engage with and support women and the legal mechanisms they do use.

Women also expressed acute dissatisfaction with customary adjudication practices and remedies. Research participants described how certain discriminatory norms led them to be routinely advised to disregard legal issues or drop cases, particularly regarding domestic abuse or sexual violence, and produced negative social impacts for women who pursued redress, even if they “won” the case. “We cannot say the woman wins just because the man has to pay compensation,” said one Mon women’s rights activist. “He pays, but the community believes she has lost her dignity. The money is one thing, but this perception has a lifelong consequence.”

Overlap and legal gray areas between the formal and informal systems were shown to occur most frequently at the community level, where village and ward administrators, local police or armed groups, traditional councils, community-based organizations and respected elders chose to independently or jointly review case submissions, mediate or facilitate negotiations, or direct a case towards a legal mechanism as they deemed fit. Research also revealed that, when women did pursue resolution to a legal dispute, they primarily approached these local actors, who thereby exercised significant authority over justice delivery in women’s lives. Women occupied few or no meaningful positions among these local bodies, resulting in fewer complaints by female claimants who expressed reluctance to describe intimate or traumatic case details to a predominantly male audience. According to a ward administrator in Yangon’s Hlaingtharya Township:

> It depends on a woman’s case where I will direct it. If it is a woman’s issue, I refer it to the [Myanmar] Women’s Affairs Association office; if it is sensitive maybe I will contact the legal aid organization; if it is serious I refer to the police station or relevant court. But most cases I resolve myself through mediation. Women don’t go to these places for the first step, they come to me and I decide.  

Accompanying this plural legal order is a correspondingly diverse set of notions surrounding the concepts of “law” and “justice.” Women and men

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1 Mon State, data validation session 3A.
2 Yangon, key informant interview 62.
often described their belief in or consent to law as related to the cultural or legal tradition from which it originated, resulting in divergent legal alliances. In several target communities, women respondents said that customary law represented their only appropriate legal tool, in spite of flaws and biases, due to its association with their religion, ethnicity or social traditions. But others in the same community felt customary law was an outmoded instrument that could not provide the same level of protection or accountability as the formal system, particularly for women.

Notably, the majority of participants stated that they prioritised promoting community harmony over securing individual remedy in relation to justice outcomes. Evidence indicated that this, too, fell heavily on women who were asked to avoid legal processes to prevent family shame and protect the social cohesion. “The main thing,” said a woman in Myitkyina, Kachin State, “is to keep the peace in the community, and in this the women lose.”

Participatory mapping exercises revealed that women rarely pursued a case before first confiding in a close friend or relative. Shared information was often passed to other family members, neighbours, teachers, religious leaders or civil society actors, each of whom could urge or oppose submission of the case to a legal mechanism. Researchers documented how this informal communication chain, along which an incident of abuse or legal wrongdoing was initially discussed and deliberated, had substantial influence over whether or not dispute resolution was ultimately sought.

In many cases, this sequence of actors impeded women’s access to justice for reasons described in detail below, but it also represented an existing, dynamic entry point – and frequently sole gateway – to improve women’s access to justice through targeted trainings on legal awareness, gender sensitivity and restorative justice that benefit individual women and their communities.

These findings suggest that while high-level interventions directed at formal legislative and institutional reform are genuinely needed, more immediate and tangible results could be achieved with a comprehensive approach that acknowledges the rich plurality of Myanmar’s legal system, in which most women use informal legal mechanisms or none at all. Women’s access to justice can thereby be enhanced from the top down, with women’s protection laws, gender training for the judiciary and law enforcement education initiatives, and also from the ground up, with localised, community-based legal awareness trainings, women’s increased participation in customary adjudication bodies, and emergent spaces for women to champion justice rights in their homes and communities.

There is a growing recognition that “in all societies, laws and justice systems are not adequately working for women.” Across Asia-Pacific, women face a number of challenges due to inadequate normative protections resulting from “legal, policy, political, institutional, and sociocultural barriers.” Within formal

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3 Kachin State, focus group discussion 24.
4 UN Women 2012.
5 UNDP 2012a.
legal systems, barriers may include a lack of rights awareness, problematic or discriminatory laws, political interference, lack of trust in the formal legal system, fear of police and prohibitive cost. At the same time, informal justice systems in many countries are characterised by a “lack of commitment, funding and acceptance, inability to enforce decisions and settlements, unclear processes, lack of [consistency] between traditional and local justice systems, laws, and human rights, and discrimination against as well as exclusion of marginalized and disadvantaged groups.”6

In Myanmar, the political transition that has occurred over the past five years has channelled significant interest and investment towards legal reform goals. Particularly since 2012, studies by domestic and international bodies have filled sizeable data gaps and informed efforts to address shortcomings in the country’s legal framework and institutions. To date, however, a substantial portion of this research has focused on the governmental legal system rather than on the numerous non-state, informal dispute resolution mechanisms at work across...

6 Ibid.
INTRODUCTION

Myanmar. The formal legal system remains a critical yardstick for measuring commitment to human rights and international legal standards, but the evidence presented in this report indicates that it does not, in fact, touch the lives of many of the country’s women.

RESEARCH BACKGROUND

Myanmar law remains a combination of pre-colonial and Burmese Buddhist law as interpreted during colonization and recurrently ever since. It is a body of commercial, customary, private and public law, with some legislation developed by successive regimes. Formal and informal state structures exist to address the population’s justice needs, but nearly half a century of military rule severely damaged the institutions and networks vital to promoting the rule of law and ensuring its uniform, rights-based application.

Before research for this report began, Justice Base conducted a preliminary study of justice mechanisms in Yangon that began to uncover the pluralistic nature of justice delivery in Myanmar. Interviewees described an “understood” process for dispute resolution whereby local authorities, including ward administrators and their assistants, acted as gatekeepers to courts, police and official administrative processes. The study indicated that village and ward administrators and their related personnel wielded broad authority over a range of matters including physical altercations, money lending, drunken disruptions and property disputes. Although this authority is formally outlined in the Ward and Village Tract Administration Law, Justice Base has documented widespread extralegal exercises of power.

Decades of armed conflict in many parts of the country further fractured legal authority. Certain ethnic areas adopted their own governance bodies as a result of political movements or isolation, and civilian wings of several non-state armed groups established parallel civil justice structures in areas where the central government presence was limited or non-existent. For example, the Kachin Independence Organization (KIO), the political wing of the Kachin Independence Army, maintains a civilian administration “that governs considerable swathes of territory, acting as a parallel state with departments of health, education, justice, and relief and development.”

7 Human Rights Watch 2012.
These alternative governance bodies are not limited to Kachin or KIO-administered territories. In each of the ethnic areas visited for this report, non-state court systems with origins in ethnic self-determination or social and historical tradition played key roles in the administration of justice and the provision of legal remedies for the civilian population. Ethnic Mon research participants who reside in government-controlled villages that border areas administered by the New Mon State Party (NMSP), the predominant ethnic Mon resistance group, reported choosing between numerous available justice mechanisms when pursuing legal redress:

For inheritance issues, the village head [administrator] uses customary law and negotiates these decisions better than country [formal] law can, and for marriage or divorce we call the yat mi yat pa [local respected person]. For issues the village head can’t resolve we use the NMSP, except for drug or murder cases, then we go to the police. [Although] even then, we might use the NMSP if we don’t want the [state] government involved.8

A few respondents reported that this pluralism provided an opportunity to move through the various legal options one-by-one until satisfactory resolution was attained. “We go directly to the village head [administrator] and if he can’t solve the problem, we go to the police. If they can’t solve, we go to [the] NMSP.”9 Despite the assertion that women who were unhappy with a decision rendered by a local justice authority could go to the police or the parallel, non-state equivalent, research participants rarely cited examples of women who did. Instead, many women were situated between justice delivery mechanisms that were often male-dominated, gender-biased, politically or procedurally convoluted, and ultimately, for reasons discussed below, inaccessible.

RATIONALE OF THE STUDY

Despite these numerous avenues for legal remedy – or, in several cases, because of them – access to justice “remains elusive”10 for many individuals in Myanmar. Notwithstanding the right to justice enshrined in Articles 19 and 21 of the 2008 Constitution and rights protected by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)11, to which Myanmar is a State Party, women across the target research areas reported feeling underserved,

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8 Mon State, focus group discussion 54.
9 Mon State, focus group discussion 51.
10 IBAHRI 2012.
11 See Article 19 of the 2008 Constitution, stating: “the following are prescribed as judicial principles: (a) to administer justice independently according to law; (b) to dispense justice in open court unless otherwise prohibited by law; (c) to guarantee in all cases the right of defense and the right of appeal under law.” Article 21 stipulates that: “(a) every citizen shall enjoy the right of equality, the right of liberty and the right of justice, as prescribed in this Constitution. (b) no citizen shall be placed in custody for more than 24 hours without the permission of a Court. (c) every citizen is responsible for public peace and tranquility and prevalence of law and order. (d) Necessary law shall be enacted to make citizens’ freedoms, rights, benefits, responsibilities and restrictions effective, steadfast and complete.”
overlooked or directly excluded by available justice mechanisms in their communities.

The 2012 UN Women report *Progress of the World’s Women* noted that the “existence of a legal plural system in itself can pose particular challenges to women seeking justice as it may create a complex web of overlapping systems in which women can lose their protection or access to rights.” The plurality of justice delivery in Myanmar presents particular barriers for women because of the considerable authority given to civil administrators over matters that largely concern women, including issues related to family law and domestic abuse or sexual violence. This means that many serious legal problems currently affecting women are brought before authorities who may not be competently trained in relevant laws or applicable human rights instruments. External research has also shown that adjudication bodies situated within both Bamar and non-Bamar ethnic groups may still decide family law cases using customary laws that “emphasize women’s roles as child-bearers and homemakers while giving men greater economic and decision-making power in domestic affairs.”

Additionally, many legal challenges and procedures in Myanmar remain undocumented and are not fully understood. The judicial process and mechanisms in ethnic or rural areas may differ to varying degrees from those in central Myanmar. Successive socialist and military regimes imposed varying levels of authoritarian or arbitrary rule that severely eroded legal institutions, and “heavy censorship and the overall decline in legal education and professionalism in Myanmar from the 1960s onward” resulted in a scarcity of legal documentation that is reliable or accessible to the country’s legal practitioners and international researchers.

Since 2012, a number of legislative reforms have been introduced regarding, among other issues, peaceful assembly, land ownership and cultivation, corruption, political party registration and labour organisation. Media censorship has eased, several political prisoners have been released, and freedom of speech and the press have increased, albeit with recent critiques concerning the amount of meaningful traction gained or lost since the transition began. On 8 November 2015, the National League for Democracy captured a landslide victory in general elections that swept 77 per cent of the popular vote, or 887 parliamentary seats, securing the right to appoint Myanmar’s next President. However, the army constitutionally retains 25 per cent of parliamentary seats and continues to control the influential ministries of Defense, Home Affairs, and Border Affairs.

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12 UN Women 2012.
13 “Bamar” refers to the majority ethnic group in Myanmar.
15 UNDP 2012b.
19 Ibid. Articles 109(b), 141(b).
Better understanding of women’s access to justice in Myanmar’s evolving environment therefore requires a baseline study to capture individual justice-seeking experiences within (and outside of) available legal systems. Mapping the informal mechanisms associated with justice delivery is particularly important because only a fraction of grievances reach formal authority figures, and an even smaller proportion end up in Myanmar courts.
This project involved a number of activities including:

- The development and training of a national network of organizations and individuals committed to promoting access to justice for women in Myanmar;
- The compilation of existing knowledge and new research on women’s barriers to justice by conducting desk-based research and mapping justice mechanisms (formal and informal) in target areas;
- A general evaluation of justice mechanisms outlining the factors that create barriers and enablers to justice;
- Women’s participatory development of recommendations to inform policy development in the field of access to justice; and
- Training for research participants (including the respondents and local researchers) on women’s rights and challenges related to accessing justice.

Research was conducted in four geographically disparate locations, but the report does not disaggregate data by target area or ethnicity in order to prevent unintended or detrimental comparisons of one population against another. For similar reasons of political sensitivity, the identities of all research respondents have been kept confidential. Instead of critiquing access to justice through a lens of state versus non-state legal systems, or customary versus statutory instruments, the research design aimed to identify and analyse cross-cutting issues that linked individual women’s justice-seeking experiences or perceptions to the larger picture of women’s access to justice needs. This approach proved fitting – researchers often encountered similar themes articulated across the target areas by women of varying linguistic, ethnic, religious, educational and socio-economic backgrounds.

The qualitative nature of this project enhanced the researchers’ ability to capture complex or abstract information that reflected how women’s notions of justice were frequently situated among other social and cultural norms. In addition, participatory workshops and consultations held before data collection did not focus on a particular legal problem (for example, property rights or domestic violence) but rather provided a platform from which women could self-identify the justice issues they saw as key concerns and collectively assess patterns and trends through this process.
OBJECTIVES AND RESEARCH QUESTIONS

The purpose of this project was to answer two main questions:

- What does access to justice look like for women in the plural legal system of Myanmar?
- How can an understanding of women’s access to justice in this system be used to enhance women’s access to justice?

While the long-term goal of the project was to better understand and improve women’s access to justice, the primary objective throughout data collection was to conduct research activities in a manner that supported and shaped networks of individuals committed to promoting access to justice for women. Researchers sought to cultivate local, front-line advocacy units that would remain dedicated to women’s access to justice discussions and action beyond the project life cycle. Above all, Justice Base and its partner organizations aspired to provide forums where women defined and identified, for themselves, the legal concepts, issues, barriers, solutions and enablers that affected their lives.
Using a feminist approach that placed women at the centre of the research design and implementation process, and drawing from Ursua’s 2014 guidance paper on women’s access to justice, the following five categories of questions were developed by Justice Base for focus group discussions and key informant interviews. Some examples of questions are given here; for a more detailed outline, please see Annex 1: Guideline for Key Informant Interview Questions.

1. **Defining legal concepts and legal issues.** What does “justice” mean to you? What does “access to justice” mean to you? What would access to justice look like in your life? Who defines justice for the community? What legal authority is most relevant to you? Trusted? Preferred? Are there some issues that are “private” – that should not be decided by law? What role does law have in the family and the community? What types of legal issues are women facing here? Are there some issues that women do not usually report? Why?

2. **Mapping the existing formal and informal legal mechanisms.** What are all of the options that exist in this community to resolve a dispute? If there are none (formal or informal) in the community, where are they located? Is the location accessible? Where do women usually go when they have a legal problem? What are women’s perceptions of these mechanisms?

3. **Documenting the legal process and women’s experiences within them.** When a case is submitted (formal or informal), who is involved? Who initiated the process? What factors affected the woman’s access to the mechanism? What challenges were faced (could be legal, family and/or community)? How and why did women decide to use the formal or informal legal system? What was the outcome of the case, and what was the impact on the woman involved? If no action was taken, why? What are women’s experiences when using these local systems?

4. **Linkages between the formal and informal systems.** How do these two systems interact, overlap and/or diverge in the community? How does the state relate to non-state justice systems? Do cases move between the two and why? What do women see as needed in either or both systems to enable access to justice? What is the difference, if any, in how state and non-state mechanisms resolve gender-affected disputes?

5. **Identifying locally owned solutions towards change.** What do women (or men) see that would improve their access to justice? What do people see as local solutions to the challenges they face? What kinds of systems or structures do women see as important to their access to justice? What changes would women like to see to improve their access to justice?
RESEARCH SCOPE AND LIMITATIONS

Early in the process of data collection, researchers observed the inherent difficulty in isolating community views of legal processes and access to justice issues from broader perceptions of cultural, political, and historical values and conditions. At times, this presented challenges to eliciting information that reflected an individual’s legal and justice priorities, but it also served to highlight the interconnectedness of justice concepts and other perceived social inequities or economic concerns. The director of a gender rights and research organization said:

When it comes to access to justice, for me there is not much hope unless the education, civil rights and political systems are transformed. We are discriminated against in many ways, at the formal [level] and by some of our customary [practices], and we don't even trust the definition of justice because we don't see it. It's not only in the courts, in the Penal Codes, but in people’s experiences of justice and unfairness around them.21

Although this research set out to collect notions of legal justice and not notions of norms, discussions and interviews repeatedly revealed how closely women and men in Myanmar fixed their beliefs about justice and law to their sense of community identity, traditional social constructs, and political and economic rights or discrimination. The member of a women’s group in Chin State asserted that justice required “equality and harmony on both sides. One side should not get more than the other, and [legal penalties] should not create conflict in communities.”22 A schoolteacher in Mon State said, “Before everything else, we are Buddhist, so we only think of law and justice in relation to that.”23 In Yangon, a civil society activist said, “The Western culture is so focused on individual rights, but here, we see justice as protecting our group identity and history.”24 This report therefore offers narratives depicting specific legal processes, but also aims to showcase the forces that exist outside of law or legal traditions that affect women’s access to justice.

The participatory project design was strengthened by the inclusion of community stakeholders and local research teams in the creation of the research plan and implementation of research activities. This also resulted, however, in target communities and respondents often being chosen from populations with whom the local researchers were already familiar based on shared ethnic, linguistic or religious backgrounds. Lead researchers worked with local teams to identify, approach and coordinate activities with groups outside of their typical professional and social networks, but the body of research participants still did not fully represent the rich diversity that exists within each target area or in Myanmar as a whole. It was beyond the scope of this project to document or

21 Yangon, key informant interview 78.
22 Chin State, focus group discussion 40.
23 Mon State, focus group discussion 56.
24 Yangon, key informant interview 78.
depict the remarkable complexity of customary legal traditions that can vary greatly from region to region and, more subtly, from one township to another in a single target area.

Although lead researchers worked to encourage access to justice activities and community-based campaigns to outlive the project life cycle, time constraints prevented deeper and more sustained support for grass-roots movements. Sensitivities surrounding legal, governance and political issues in villages and cities affected participants’ willingness to engage in frank discussions about their justice needs and observations. In several cases, information was collected that detailed experiences described as belonging to friends, neighbours or fellow community members, but several participants remained cautious about describing an issue as their own or relating to their own lives. Based on discussions with other research teams conducting studies on rule of law and access to justice in Myanmar, these issues were not uncommon.

Finally, schedule limitations hampered the scale and inclusivity of planned activities with some parliamentarians, state judges, government officials, and key representatives from the legal sector and women’s rights organizations who were originally selected for key informant interviews or consultations.

**KEY CONCEPTS**

Prior to commencing data collection, lead and local researchers worked together to collectively define key research concepts to ensure a uniform understanding and application of relevant justice terms. These definitions are provided below.

**Access to justice**: For the purpose of this research, access to justice is understood as a fundamental human right measured by an individual’s ability to obtain the protection of the law and the availability of legal remedies before a court or equivalent mechanism that adheres to human rights standards. This research also envisions access to justice as falling along a continuum that begins “the moment a grievance occurs” and concludes once redress has been provided, thereby encompassing multiple entry points for study, advocacy and intervention.

**Rather conspicuously**, the precise term “access to justice” is not found in international human rights instruments before the GR. Guarantees for non-discrimination and equal protection of the law, the right to an effective remedy, and a fair and public hearing by a competent, independent, and impartial tribunal are enshrined in the International Covenant on Civil and Political Rights and the 1948 Universal Declaration of Human Rights. Similar protections and

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28 Ibid.
29 Ursua 2014, p. 5.
rights are mandated in CEDAW, which obliges States Parties to “establish legal protection of the rights of women on an equal basis with men” and ensure women are protected against gender stereotyping or discrimination that can inhibit their right to a just trial.\(^{30}\)

**Law and justice:** The project’s research framework and participatory methodology started from the belief that knowledge, concepts and political systems are socially constructed and gendered. They are not fixed, but rather reflect the power, history and privilege out of which they grow and evolve. In fact, “the potential of formal and informal mechanisms to provide people with a sense of ‘justice’ in a particular situation depends on the context, and is just one part of a bigger picture.”\(^{31}\)

For this reason, women and men from the target communities were viewed as the experts in defining “law” and “justice,” and relating how each is experienced. Every focus group discussion and many key informant interviews began with an exploration of the meaning of “justice,” the perceived authority, relevance and origin of law, and the expected or desired outcomes from the application of law and the practice of justice. Research revealed how closely linked notions of “law” and “justice” are to a person’s broader sense of her/his religious, ethnic, political and traditional identity. Corresponding to Than Than Nwe’s definition of “culture,” the project characterizes “justice” as “an active agent, constantly changing, shaping and re-shaping and in the process re-affirming, strengthening or weakening existing social relations.”\(^{32}\)

During research activities, the lines between what participants referred to as “customary law,” “informal law,” “culture law” or “village law” would frequently blur. Research that elaborates on what communities see as “law” versus the locally accepted set of norms and behaviours would help to strengthen studies of this complex social and conceptual framework.

**Legal system:** A legal system recognizes people’s entitlement to legal remedies (guaranteed by law or customary norms) when those remedies are in dispute.\(^{33}\) Justice Base also uses the term “justice mechanism” to characterize the body, actor or institution within a legal system that resolves disputes or delivers justice.\(^{34}\) To rise to this definition, the systems and mechanisms discussed herein have only to be recognized and accepted by the community as legitimate sources of law, conduct regulation and dispute resolution, regardless of whether or not the state acknowledges or authorizes them as such.\(^{35}\) Legal systems also effectively measure women’s access to justice due to their distinctive integration

\(^{30}\) Ibid., p. 7.
\(^{31}\) UNDP 2005, p. 4.
\(^{32}\) Than Than Nwe 2003.
\(^{33}\) Ibid.
\(^{34}\) Ursua 2014, p. 2.
\(^{35}\) Ibid., p. 14.
Voices from the Intersection: Women’s Access to Justice in the Plural Legal System in Myanmar

of official and practised attitudes towards law. Women may be denied access to justice due to the “power imbalances that are reflected or institutionalized in the justice systems – between the rich and the poor, between men and women, between rich men and poor women, between groups of different ethnicity and religion, among other polarities.”

Formal and informal legal systems: Although multiple legal systems deriving from different religious, colonial, political or ethnic contexts can operate in a single community, this study uses the two broad categories of “formal” and “informal” in which to situate the various legal mechanisms found in target communities. The formal justice system and its mechanisms are the result of direct involvement by the state authority in their “creation, constitution, composition or accountability. On the other hand, non-state [informal] justice mechanisms are those existing in indigenous, customary or religion-based systems that operate independently of or autonomously from the state and have not been officially incorporated into the state justice system.”

Legal pluralism: While “legal pluralism” can refer to the various legal institutions or governmental bodies that apply law to differing groups of people within the state, this report conceives of legal pluralism as a context in which a range of legal systems, norms, rules, institutions, laws or methods of resolving dispute coexist. For example, we refer to legal institutions such as courts, police stations and ward administration offices as part of the formal system, while the informal system comprises any community-based mechanisms used to resolve disputes, such as religious centres, councils of elders or ethnic leaders and community-based organizations. Taken together, these various mechanisms and actors can form a supportive, interwoven foundation of numerous pathways to justice. They may also enshrine harmful legal practices; discourage access for women, the poor or minority groups; or destabilize the application of rights-based law.

Communities and individuals may choose from their available legal tools in a plural system for a number of reasons. Informal legal mechanisms may be traditionally preferred over the formal system; the type of legal infraction may determine how the system is chosen (for example, a case of motorbike theft, disputed property ownership or sexual assault); or the only accessible or affordable mechanisms found in a certain locale may be customary, religious or indigenous. Legal pluralism therefore “describes the social reality that what some groups or communities recognize as law may not be state law, and the institutions or mechanisms that enforce that law may not be of the state or part of the official legal system.”

36 Ibid., p. 4.
37 Ibid., p. 2.
38 Ibid., p. 1.
39 Ibid., p. 12.
40 Ibid.
**Feminist research:** In feminist research, women’s active participation and decision-making throughout the development of the framework and final product is essential to the research process itself. For this project, practical barriers to women’s participation were considered and gendered power relations were interrogated to ensure that women were the drivers of their advocacy goals and the authors of policy solutions to their own justice needs. As described by the Asia Pacific Forum on Women, Law, and Development, in feminist methodologies “research participants are not viewed as objects on whom research is conducted but rather the subjects of the inquiry who set the agenda, participate in the data collection and analysis, and control the use of the outcomes, including deciding what future actions to take or directions to go.”

**METHODOLOGY**

This project employed a feminist participatory action research methodology designed to actively involve Myanmar women and target groups in the development and implementation of the research. As is often the case when distinguishing between participatory research and more conventional methods, the focus was on community-based analysis of the issue being investigated, shared ownership of the research product among stakeholders and local researchers, and an orientation towards research that can be applied for social change. At the conclusion of field research and report writing, it was hoped that local researchers and project contributors would continue to play a role in the ongoing justice reform process.

Focus group discussions (FGDs), key informant interviews (KIIs) and justice system mapping activities comprised the primary methods of data collection. Justice Base also performed desk research of existing materials on access to justice in Myanmar and carried out basic legal analysis of relevant government laws. In addition to the participatory nature of data collection methods, the project employed a collective approach to data validation and analysis, including two data validation sessions with stakeholders and civil society members in Mon State and Yangon, and five group analysis sessions with local research teams.

The central research design and attendant interview guidelines were developed cooperatively by Justice Base and partner organizations, but significant flexibility was built into the research framework to allow each of the four local research teams to analyse, critique and adjust their data collection approaches to ensure sensitivity and relevancy for their respective target areas. Before data collection began, a three-day technical training workshop was held in each area to promote the uniform application of concepts, objectives, methodological tools and research ethics, but also to provide local teams with time and guidance to determine for themselves their target respondents, research schedule, allocation of budget and particular cultural considerations (for example, whether to conduct focus group discussions with both men and women present).
Research was conducted with 411 individuals, 21 per cent of whom were men, from February to September 2014. In February 2015, an additional consultation was held in Naypyitaw with 25 members of Parliament for a project total of 436 respondents, 24 per cent of whom were men.

A series of participatory and inclusive activities, detailed in figure 1, encouraged localized, collective action toward the improvement of community-based legal awareness, the expansion of women’s influence on Myanmar’s ongoing reform process and the documentation of women’s immediate justice needs.

Figure 1: Participation by target area

![Participation by target area](chart)

**RESEARCH TEAMS**

Justice Base appointed two women researchers, a Myanmar national and an international consultant, to lead project objectives and undertake the compilation of existing knowledge and new research on women’s access to justice in Myanmar. These researchers partnered with community-based research and advocacy organizations in the four target areas to conduct the field research and consultations: the Gender and Development Initiative in Yangon, Yangon Region; the Women Empowerment Project in Mawlamyine, Mon State; the Htoi Gender and Development Foundation in Myitkyina, Kachin State; and the Institute for Chin Affairs in Falam, Chin State. These organizations work on gender, access to health, justice, education services and ethnic rights issues in their respective regions. They have collected data and provided trainings related to women’s leadership, CEDAW, women’s participation in local governance structures, and/or the United Nations Security Council Resolution 1325 on women, peace and security.

Local research teams of three to five members worked in tandem with one lead researcher to customize, coordinate and implement fieldwork over two weeks. Activities in Mon State were conducted by three ethnic Mon women trained in human rights research and women’s leadership workshops; three ethnic Chin women researchers implemented activities in Chin State. In Yangon, research was conducted by five ethnically diverse women including a lawyer.
specializing in LGBT (lesbian, gay, bisexual, transgender) and sex worker cases, a human rights activist and former political prisoner, and three gender and development researchers. The team in Kachin State was comprised of two men and three women who work in camps for internally displaced people (IDPs) and conflict-affected areas to collect data and conduct trainings on resolution 1325, CEDAW and women’s reproductive rights. For a more detailed outline of project methodology, see Annex 2: Research Methodology

During the two weeks of data collection in each research area, local research teams aimed to meet with 100 respondents through a combination of focus group discussions and key informant interviews. As mentioned above, this period was preceded by a three-day consultation and technical training workshop to brief the local researchers on principles relating to women’s access to justice, project objectives and methodological approaches, and research questions and participatory activities. The four teams shared thoughts and experiences regarding the practical application of these overarching project methods in their communities and, where needed, how to adapt activities to better suit context or custom. Researchers on each team also selected the word for “justice” in their respective language to use when conducting interviews:

- Chin: Dingnak le diknak
- Jinghpaw (the predominant language spoken within the Kachin group of languages): Tara rap ra ai lam
- Mon: Pa poe taw
- Myanmar (Burmese): Tayar hmya ta hmu
INTRODUCTION TO MYANMAR’S PLURAL LEGAL SYSTEM

Over the centuries preceding British colonial rule, Bamar kings conquered much of the territory that constitutes present-day Myanmar. Three main sources of law existed under their rule: Yazathats, the kings’ royal edicts and ordinances; Dhammathats, texts with disputed origins but often described as deriving largely from Hindu Dharmaśāstra and serving as the foundation of village dispute resolution jurisprudence later compiled into Burmese Customary Law; and Phyathtons, judicial decisions made through formal court proceedings established by the monarchy. This period of absolute monarchy was influential on certain prominent characteristics of the country’s modern legal pluralism and top-down governance structures, but also on more subtle elements of legal and authoritarian attitudes, culture and practices.

The arrival of the British was marked by three wars in 1824, 1852 and 1885, each annexing part of Burma, as it was named by the colonisers. Eventually, the territory was incorporated into the legal infrastructure of the British colonial administration of India, including the common law system. One of this system’s hallmarks is the application of case law precedent in the absence of a statutory provision to the contrary. Colonial authorities also extended to Burma the statutory laws used to govern India, including the Sale of Goods Act, the Companies Act, the Arbitration Act, and the Civil and Criminal Procedure Codes. The government of Burma and successive military regimes retained these laws after independence, with a few amendments.

The British colonial period entrenched legal pluralism in two primary ways. First, colonization brought with it a large contingent of people from other countries, primarily China and India, and “the resulting plurality of diverse creeds and beliefs necessitated accommodation in laws.” Secondly, based on experience gathered in other colonies, the British maintained that excessive discord among local communities could be moderated if colonial administrators did not interfere

42 Shan kings also ruled some territory during certain periods.
43 Kham 2014.
44 Significant colonial law reports, where judgements were published, included the Lower Burma Rulings (1900-1922), the Upper Burma Rulings (1892-1922), and the Rangoon Law Reports (1937-1942 and 1946-1947).
46 Kyaw 1991, p. 60.
with local customs and religions, but instead allowed limited application of customary law to certain “native-law-zones,” for example, the Dhammathats for Buddhists. According to the Burma Laws Act of 1898, which was designed to manage both these colonial conditions, the “zones” of customary jurisdiction were “succession, inheritance marriage or caste, or any religious usage or institution.” For cases not in that list, courts were instructed under the Act to decide according to “justice, equity, and good conscience.”

Remaining in force today, the Burma Laws Act specifically allows Buddhist Law to govern for Buddhists, Hindu Law for Hindus, and Islamic Law for Muslims, with separate statutes providing additional restrictions and provisions for religions not covered by the Burma Laws Act. Certain ethnic minority regions were also administered separately from Burma proper, allowing for a degree of local autonomy and the continuation of some degree of customary law and practices as codified in a number of regulations, such as the Arakan Hill District Administration Laws Regulation, the Kachin Hill Tribes Regulation, and the Chin Hills Regulation. Indeed, this research found that, except in matters perceived by the community to be definitively “criminal” under formal statutory law (for example, theft or murder), most respondents reported using customary legal traditions for marriage, divorce and inheritance, for local disputes over money or land, or for interfamilial conflict.

While the British acceded this rather narrow sphere of customary jurisdiction, some scholars contend that the colonial period radically changed the nature of customary law and identity in Burma, resulting in a field of customary law that was “both a concession and a colonial construct.” Apart from the native-law-zones mentioned above, the majority of the sophisticated pre-colonial Bamar legal traditions that were “strikingly similar to the British common law tradition and strikingly different to anything found elsewhere in Asia” were otherwise actively dismantled. British colonial administrators:

[...] deliberately destroyed a literate and professional legal culture. The shene [Bamar legal specialists] with their distinctive uniforms, their law-libraries and their unrivalled knowledge of the practicalities of Burmese dispute settlement, were legislated into oblivion, along with the courts in which they had argued and the entire structure of Burmese government [...]

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49 Huxley 1998.
51 Burma Laws Act of 1898.
52 Ibid., Article 13.
53 Crouch 2014b, p. 36. See also the Burma Laws Act of 1898, Article 11 (“the law to be administered in a Shan State shall be the customary law of the State in so far as the punishments which may be awarded thereunder, or the practices which are permitted thereby are in conformity with the spirit of the law in force in the rest of British India”), quoted in Maung 1963.
54 C Crouch 2015a, p. 1.
56 Ibid.
Additionally, the colonizers’ conflation of the Buddhist Dhammathats with Burmese customary law imposed the primacy of religion over other traditional markers of identity, a substantial revision that continues to affect and polarize Myanmar society today:

Whether due to the ignorance of the English concerning the relationship between customary law and the Buddhist religion, or due to the deliberate plan of colonial masters, Burmese customary law became the Buddhist law by section 13 of the Burma Laws Act of 1898. Consequently, Burmese society was divided into a number of religious enclaves as well as being geographically bisected by other Regulations. As the society was thus divided, community was strongly entrenched by religion. The result was that antagonism among the diverse religious communities [...] eventually gathered strength as questions of maintenance, divorce or inheritance arose.57

Another prominent legal legacy left by the British, the Penal Code of 1860,58 remains Myanmar’s principle legislation concerning violent crimes and their punishments.59 Laws pertaining to sexual harassment and assault are all found in the original Penal Code, thus containing language that dates back to the colonial era and does “not adequately address women’s lived experiences of violence.”60 For example, legal sections penalize “utter[i]ng] any word, maki[n]g any sound or gesture” intended to “insult the modesty of any woman”61 and “assault[i]ng] or us[i]ng] criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty.”62 These violations are punishable by a fine and/or imprisonment of one or two years, respectively.63

At the time of publication, no laws exist in Myanmar specifically regarding domestic violence or the prevention of violence against women. The draft National Law on the Protection and Prevention of Violence against Women has been completed and, if passed by Parliament, would become the country’s first statutory law to criminalize and stipulate minimum penalties for multiple forms of sexual violence and harassment against women in public spaces and the home.64

For now, laws prohibiting general violence and intimidation do exist. The Penal Code contains provisions relating to criminal force and assault as defined in Articles 349-358 and punishable by either three months imprisonment and/or a fine.65 Article 506 specifically addresses “criminal intimidation,” which carries

58 This may also appear as the Penal Code of 1861, the year it went into force.
59 Gender Equality Network 2013, p. 7.
60 Ibid., pp. 1, 7.
61 Penal Code, Section 509.
62 Ibid., Section 354.
63 Ibid., Sections 354, 509.
64 UNFPA 2015.
65 Penal Code, Section 352.
punishments of up to two years in prison. The Penal Code also criminalizes voluntarily causing a woman to miscarry (except to save her life), killing a woman with the intent of causing her to miscarry or sterilizing a woman without certification by a government board. Homicide and murder are covered under Chapter XVI of the Code.

**MYANMAR’S FORMAL LEGAL STRUCTURE**

The common law legal system inherited from the British continues to underpin Myanmar law and judicial proceedings today, with the latter governed by the colonial Codes of Civil and Criminal Procedure (including a few amendments). In keeping with this tradition, selected case law is compiled in the Myanmar Law Report and published annually “by a committee that consists of staff of the Union Supreme Court and the Union Attorney General’s Office.” While this volume is made publically available, it only publishes a small number of the Supreme Court cases per year, none of the lower court decisions and a fraction of all writ cases.

The legal system itself developed in distinctive ways for different areas of law. Family law is primarily governed by religious law systems originating from the British Indian personal law system. For areas like criminal law, evidence, company law and civil procedure, “the laws remain the original codes and laws adopted from British India, with minor amendments over time.” During the colonial period there was an attempt to compile the Dhammathat to develop a body of case law and precedent that applies to Buddhists in relation to family law matters today. Finally, new areas of law – such as foreign investment – have been legislated by successive regimes and public law has been determined by the relevant Constitution.

As observed by the International Commission of Jurists in 2013, however, “in practice only infrequent use is made of such standard components of the Common Law system as written judgements and reliance on precedent.” This assertion is consistent with narratives collected for this report communicating the common perception that judges in Myanmar wield enormous freedom and authority to determine charges, sentencing and penalties based upon personal inclination or

66 Ibid., 506.
67 Ibid., Sections 312, 312(A), 313, 314.
69 Crouch 2014a, p. 7.
70 Ibid.
71 Melissa Crouch, email communication with researchers in October 2015.
72 Ibid.
73 Ibid.
74 International Commission of Jurists 2013, Crouch 2014b.
political motivation. Reflecting on a particularly grueling experience appearing before a township judge, a gender rights activist in Yangon quipped, “The first hell is prison, the second hell is court.”

The basic structure of the Government is defined by the 2008 Constitution. It sets out rights and duties, names the President as “Executive Head of the Union,” grants legislative powers to the Pyidaungsu Hluttaw (the bicameral Parliament) and provides for a multilevel judiciary with powers to decide cases and interpret law.

In Chapter I, the Constitution asserts that all citizens have the “right of equality, the right of liberty and the right of justice” as well as responsibility for “public peace and tranquility and prevalence of law and order.” Specific rights are spelled out in Chapter VIII, entitled “Citizen, Fundamental Rights and Duties of the Citizens.” It enshrines gender equality and a number of guarantees specific to those accused of a crime, discussed below. It also sets out five writs available to challenge violations of fundamental rights guaranteed in the chapter.

Despite these assurances, the 2008 Constitution has been widely criticized both for the process by which it was enacted and the substance of its provisions, particularly those conferring considerable powers to the military and providing immunity from prosecution for certain government officials. Additionally, although the right to issue writs was conferred on the Supreme Court in 2011, the Constitution “departs from international practice” by limiting that right in the event that an emergency is declared. This occurred after communal violence broke out in Rakhine State in 2012, when “writ applications could not have been brought on behalf of the many Rohingya who were illegally detained.”

The Constitution mandates that an individual may only be convicted according to law and for a punishment no greater than is mandated by law. It provides for the “right of defence” and prohibits detention “for more than 24 hours without the remand of a competent magistrate” except as “precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquility.”

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75 Yangon, data validation session 2A.
76 2008 Constitution, Chapter V.
77 Ibid., Chapter IV.
78 Ibid., Chapter VI.
79 Ibid., Article 21(a).
80 Ibid., Article 21(c).
81 Ibid., Article 378.
83 Crouch 2014a, p. 5.
84 Ibid.
85 Ibid., Article 296(b).
86 Crouch 2014a, p. 5.
87 2008 Constitution, Article 373.
88 Ibid., Article 375.
tranquility in accord with the law in the interest of the public, or the matters permitted according to an existing law.” The Constitution also prohibits double jeopardy and retroactive criminal laws.

According to the International Commission of Jurists (ICJ), the “right of defence described in Myanmar’s Constitution implies a right of an accused person to access to their lawyer” and the Prisons Act provides for visitation by “qualified legal advisers without the presence of any other person.” The international non-governmental organization explains that in practice, however, this right is often not realized due to difficulties faced by lawyers when accessing their clients, “particularly when the case is considered to be politically sensitive.” Perhaps more fundamentally, the right to a defence can be undermined because criminal defendants in Myanmar are not guaranteed representation if they cannot afford it, except in capital cases.

Peculiarly, the Constitution grants “equal rights” specifically to “mothers, children, and expectant women,” thereby leaving out women who are not captured in those categories. It also guarantees that women are entitled to the “same rights and salaries” as men in civil service posts, but goes on to say, “However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.”

After the 2015 general elections, women now account for 13.6 per cent of elected members of parliament at the Union level and 12.5 per cent of elected seats at the state and region levels. While this more than doubled women’s representation in Myanmar’s parliament, it remains “considerably less equal than most other countries in the region” in parliamentary gender balance.

Myanmar’s system is unitary as opposed to federal, but the 2008 Constitution does establish a system of states, regions and self-administered zones. Recent research indicates that state and regional governments may be influenced by the Union Government or military and have limited practical powers.

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89 Ibid., Article 376; also Article 21(b) (“No citizen shall be placed in custody for more than 24 hours without the permission of a Court.”).
90 Ibid., Article 374.
91 Ibid., Article 43.
92 International Commission of Jurists 2013, p. 36.
93 Ibid. (quoting Prisons Act (India Act IX, 1894), Article 40).
94 Ibid, pp. 36-37.
95 IBAHRI 2012, p. 46.
96 2008 Constitution, Article 351.
97 Ibid., Article 350.
98 Ibid., Article 352.
100 Ibid., p. 8. See also Minoletti 2014.
101 IBAHRI 2012, p. 21.
102 2008 Constitution, Articles 49-51.
103 Crouch 2015b, pp. 4-5.
Self-administered areas have greater autonomy, with a “leading body” that exercises executive and legislative power, but they remain vulnerable to Union interference because the selection process for chairpersons requires presidential appointment. A quarter of members are reserved for Defense Services personnel nominated by the Commander-in-Chief, and many leading bodies are headed by members of the ruling Union Solidarity and Development Party. The 2008 Constitution also provides for Ministers of National Race Affairs at the state and region or zone and division level for national races that have at least .1 per cent of the national population in the given area, but these ministers are subordinate to the central Government, and their role is determined by the President.

Despite persistent efforts and a successful signature campaign by the National League for Democracy, little to no progress has been made on amending the military’s power in government as enshrined in the 2008 Constitution. Additionally, more than a year of nationwide ceasefire negotiations between the government and over a dozen armed ethnic organizations produced an

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104 2008 Constitution, Articles 275-283.
105 Lwin 2014.
106 2008 Constitution, Article 276(e) (f).
107 Ibid., (d.ii) (i).
109 2008 Constitution, Articles 15, 17(c), 161(b-c), 262.
110 Marston 2014.
agreement, but only eight signatures were secured amid ongoing military incursions and with some of the most prominent groups conspicuously absent. In these conflict areas, allegations of rape, willful killings of civilians, extortion and other forms of abuse by the military continue to surface. Complaints and protests regarding violations of land rights are common, and documentation of widespread abuses in Myanmar’s lucrative jade mining industry recently garnered widespread attention. More than 50 students demonstrating against a national education bill remain imprisoned without access to adequate healthcare, and activists and regular citizens have been arrested for politically unpopular posts on social media.

In light of its decades of oppressive military rule and previous international status as a pariah state, Myanmar has achieved some commendable gains in areas of democratic processes, civil liberties and institutional reform. The exhilaration felt by millions of the country’s registered voters during the free and fair elections of November 2015 may also reinvigorate the process of political transformation and economic development. Residents and observers, however, continue to watch key indicators of the pace and progress of change, and among the most prominent will continue to be Myanmar’s laws, legal system and reforms to uphold human rights.

Levels of Judicial Jurisdiction and Relevant Administrative Bodies

The structure of the judiciary is provided for in the 2008 Constitution, along with three “judicial principles,” namely, “the administration of justice independently according to law;” “the dispensation of justice in open court unless otherwise prohibited by law;” and “a guarantee in all cases of the right of defence and the right to appeal under law.” The Union Judiciary Law (2010) was enacted to implement the judicial system, as enshrined in the 2008 Constitution, and contains four levels of courts as well as courts martial (described below).

In contrast to women’s low levels of participation in Parliament and the ministries, in 2012, female judges in Myanmar’s judiciary marginally outnumbered their male counterparts by 570 to 558. But in the High Court, men outnumbered women 36 to 16, and currently no Supreme Court justices are women. According to a member of Parliament for the Yangon Region, while it is true that many women work at the district court level, they are not often seated behind the bench:

112 See, e.g., Weng 2014.
113 Global Witness 2015.
114 All Burma Federation of Student Unions, et. al. 2015. Also Fortify Rights, 2016.
116 Ibid., Article 19.
117 Ibid.
118 Ibid.
Once women [judges are promoted to] the district level, they no longer sit in the court: they will work in the administrative office. This doesn't mean we have [fewer] women at the district level, it's just that they stay in the office. They do research, they have many administrative duties, they give advice, [or] sit in meeting[s] as legal aides. This is the same for police. Our parliament office is attached [to] the Yangon Region police office and we see many women police officers. But they don't put them in the stations, they put [them] in the headquarters or administration.119

**Level 1: Township courts and special courts.** Township courts are courts of original jurisdiction over criminal cases with penalties of up to seven years, civil cases where the subject matter does not exceed 10 million kyats and juvenile cases.120 Examples of crimes tried in township courts include prostitution, gambling and assault. Special courts are not individually named in the Constitution but appear to be provided for as “other courts constituted by law,”121 including juvenile courts, courts for municipal offences and courts for traffic offences.122

**Level 2: District courts and courts of self-administered regions and zones.** These are both courts of original, appellate and “revisional” jurisdiction.123 District courts have original jurisdiction over “serious” criminal cases and civil cases with subject matter up to 500 million kyats.124 Examples of criminal cases heard in the district court in the first instance are murder, rape and robbery.

**Level 3: High courts.** There are 14 high courts, one for each of Myanmar’s states and regions. They are courts of original, appellate and “revisional” jurisdiction125 and have original jurisdiction over civil cases with subject matter exceeding 500 million kyats.126

**Level 4: The Supreme Court of the Union and the Constitutional Tribunal of the Union.** The Supreme Court is the court of final appeal for courts except the Constitutional Tribunal and courts martial.127 It has original jurisdiction over certain disputes between state, regional and Union governmental bodies, “revisional jurisdiction,” and the right to issue five writs including the writ of habeas corpus and the writ of certiorari.128 According to the Constitution, the President selects the Chief Justice of the Supreme Court and submits the nomination to the Parliament.129 The remaining judges are selected by the

119 Yangon, key informant interview 70.
120 2008 Constitution, Article 19; Supreme Court of the Union, “Township Courts.”
121 Ibid., Article 314(d).
122 DLA Piper New Perimeter et al. 2013; Supreme Court of the Union, “Other Courts Constituted by Law.”
123 2008 Constitution, Article 315.
124 Supreme Court of the Union, “District Courts.”
125 2008 Constitution, Article 306.
126 Supreme Court of the Union, “High Courts.”
127 2008 Constitution, Article 295(b).
128 Ibid., Articles 295-296.
129 Ibid., Article 299(c).
President in “coordination” with the Chief Justice and submitted to Parliament for approval.\textsuperscript{130} The Parliament can only reject a nomination if “it can clearly be proved that the persons do not meet the qualifications for the post prescribed in Section 301.”\textsuperscript{131}

Members of the Constitutional Tribunal are also selected by the President and through parliamentary approval,\textsuperscript{132} but the Tribunal is solely tasked with interpreting the Constitution, resolving constitutional disputes between government entities, and “vetting” whether or not government actions comply with the Constitution.\textsuperscript{133}

\textbf{Courts martial} operate independently of the civilian judiciary structure and have responsibility under the Constitution “to adjudicate Defence Services personnel.”\textsuperscript{134} The courts martial are seemingly exempted from Supreme Court oversight by Article 294, which states: “Without affecting the powers of the Constitutional Tribunal and the Courts-Martial, the Supreme [sic] Court of the Union is the highest Court of the Union.”\textsuperscript{135} This arrangement has drawn numerous critics, including the Burma Lawyers’ Council, which noted the improbability of impartial trials for military personnel accused of perpetrating human rights abuses and criticized the elevation above the law of the Commander-In-Chief, who retains final authority on military justice.\textsuperscript{136} According to a lawyer in Kachin State interviewed for this report:

\begin{quote}
\begin{quote}
The courts martial are a big problem for us [because] we can't know anything [about the case]. There is no transparency; we do not know what happened or whether the person was tried and convicted, even when the cases involved incidents [that occurred] outside the military [compound]. [The law guarantees] no media, no public hearing, just a decision that we never hear. This is a big conflict for us.\textsuperscript{137}
\end{quote}
\end{quote}

Notably, after receiving pressure from civil society and the media, in 2014 a military court transferred a case involving the alleged rape of a 14-year-old Kachin girl by a Myanmar soldier in Shan State to a civilian court.\textsuperscript{138} The soldier was found guilty of kidnapping and rape and sentenced to 14 years in prison.\textsuperscript{139}

\textbf{The Office of the Union Attorney General.} Although formally separate from the judicial branch, the Office of the Union Attorney General (OAG) commissions thousands of law officers and functionaries who conduct criminal prosecutions

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{130} Ibid., Article 299(d).
\item \textsuperscript{131} Ibid., Article 299(d)(2).
\item \textsuperscript{132} Ibid., Articles 321, 327-329.
\item \textsuperscript{133} Ibid., Article 322.
\item \textsuperscript{134} Ibid., Article 319.
\item \textsuperscript{135} Ibid., Article 294.
\item \textsuperscript{136} Burma Lawyers’ Council 2011, p. 3.
\item \textsuperscript{137} Kachin State, key informant interview 11.
\item \textsuperscript{138} Nai 2014.
\item \textsuperscript{139} Thomson 2014.
\end{itemize}
\end{footnotesize}
under the Attorney General, “an official post inherited from the British.”\textsuperscript{140} The President appoints the Attorney General and, similarly to Supreme Court Judges, a presidential nominee can only be rejected by Parliament if “it can clearly be proved that the person concerned does not meet the qualification of the Attorney-General of the Union.”\textsuperscript{141}

The OAG comprises four departments: Legislative Vetting and Advising Department, Legal Advice Department, Prosecution Department and Administration Department\textsuperscript{142} with offices at the state/regional, district and township levels.\textsuperscript{143} The Prosecution Department is “responsible for appearing on behalf of the Union in criminal and civil cases in which the government is involved.”\textsuperscript{144} It has been reported by practising lawyers in Myanmar that officers from the OAG sometimes act on political orders and disregard proper procedures and evidentiary requirements.\textsuperscript{145}

\textbf{The Myanmar National Human Rights Commission.} The commission was originally established by order of the President in 2011\textsuperscript{146} and was officially recognized and defined by legislation passed in March 2014.\textsuperscript{147} Tasked with promoting human rights awareness, the commission makes recommendations related to international human rights instruments, investigates complaints of human rights abuses and prepares reports.\textsuperscript{148} It has been criticized heavily\textsuperscript{149} for perceived executive and military interference in its investigations, and for continuing to contribute to Myanmar’s culture of impunity.\textsuperscript{150} A Myitkyina-based lawyer interviewed for this research concluded, “In three years’ time, the amount of action the Commission has taken is less than you can count on 5 or 10 fingers, even though there are hundreds of cases of human rights [violations] to be heard.”\textsuperscript{151}

\begin{itemize}
\item \textsuperscript{140} IBAHRI 2012, p. 61.
\item \textsuperscript{141} 2008 Constitution, Article 237(b).
\item \textsuperscript{142} Office of the Union Attorney General, “Organization Setup.”
\item \textsuperscript{143} Ibid.
\item \textsuperscript{144} Office of the Union Attorney General, “Prosecution Department.”
\item \textsuperscript{145} IBAHRI 2012, p. 63.
\item \textsuperscript{146} Made official through Notification No. 34/2011 of the Government of the Republic of the Union.
\item \textsuperscript{147} Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21, 2014, Section 3.
\item \textsuperscript{148} Ibid., see also DLA Piper New Perimeter et al., p. 20.
\item \textsuperscript{149} IBAHRI 2012, p. 46 (“Concerns have been expressed, however, that the [Myanmar National Human Rights Commission] remains a tool of the executive, rather than an independent check on government.”).
\item \textsuperscript{150} Burma Partnership and Equality Myanmar 2014, p. 17.
\item \textsuperscript{151} Kachin State, key informant interview 15.
\end{itemize}
Box 1: Bringing a criminal case to court or the police

Criminal proceedings are governed by the Code of Criminal Procedure (1862), the Evidence Act (1872), the Penal Code (1860), and, where applicable, the Child Law (1993). Additionally, the Courts Manual (1999) provides guidance on courtroom procedure. Other laws relevant to investigation, arrest and detention are the Police Manual and the Prisons Act (1894). The practice of law is governed by the Legal Practitioners Act (1999) for higher grade pleaders with some provisions also applying to advocates, and the Bar Council Act (1926) for advocates. Offences are categorized along at least three different lines. First, offences are divided into “cognizable” and “non-cognizable.” Cognizable offences are those for which a police officer must have a warrant to make an arrest. Non-cognizable cases are those for which a warrant is not necessary. Second, cases are divided into “warrant cases” and “summons cases.” Under a warrant case, the sentence ranges from imprisonment for more than six months to death. In a “summons case,” the punishment is less than six months. Finally, offences are also categorized as “bailable” or not, which indicates whether an individual arrested for that offence may be released on bail. Schedule II to the Code of Criminal Procedure lists offences and indicates, among other things, whether each offence requires a warrant (and is thus cognizable), whether it is a summons or a warrant case, and whether it is bailable or not.

A police officer or an individual can file criminal cases, and a government “law officer” usually represents the prosecution. An individual who has filed a complaint in court with the police or with a judge may hire an outside “advocate,” or lawyer, by arrangement with the assigned law officer and with permission of the court. This private lawyer may conduct a criminal hearing under the law officer’s “instructions.”

At the beginning of a warrant case, the judge hears the testimony of the complainant (if any) and any other evidence in favour of the prosecution. The accused then has the right to cross-examine any of the witnesses.

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152 Legal Practitioners Act, Sections 36 and 41-44.
153 The Courts Manual also provides guidance in relation to the Legal Practitioners Act (1879) and the Bar Council Act (1926).
154 Code of Criminal Procedure, Section 4(1)(f).
155 Ibid., Section 4(1)(n).
156 Ibid., 4(1)(w).
157 Ibid., 4(1)(v).
158 Ibid., 4(1)(a).
159 Ibid., Schedule II.
160 Ibid., Section 493.
161 Ibid., Section 493.
162 Ibid., Section 252.
presented. If the judge, after hearing the evidence in favour of the prosecution or at any point prior, determines that there is insufficient evidence to support the charges, he or she will dismiss the case. If at any point the judge finds that there is a basis for presuming that the accused committed a triable offence, the judge frames charges against the accused, which are to be read and explained to him or her. The judge then questions the accused regarding guilt and whether or not a defence will be offered. If the accused “refuses to plead,” the trial proceeds.

The accused is then given the opportunity to recall any of the prosecution’s witnesses for cross-examination and present evidence in his or her defence. After hearing the defence case, a judge may then proceed to issue a verdict and, if applicable, a sentence.

A summons case follows a similar overall order, beginning with the presentation of the prosecution’s evidence followed by that of the accused. The judge questions the accused regarding guilt or innocence at the beginning of trial, however, and several elements required in a warrant case are missing in a summons case. For example, no formal charge is necessary, and the judge can find the accused guilty of any offence triable as a summons case, “whatever may be the nature of the complaint or summons.”

THE FUNCTION OF CUSTOMARY AND INFORMAL LEGAL MECHANISMS

The ethnic populations of Myanmar who contributed to the majority of this research – Mon, Kachin (primarily Jinghpaw), Chin and Bamar – have intricate and distinctive histories stemming from hundreds of years of shifting and often interrelated factors: empires and dynasties, tribal chiefdoms, ethno-linguistic diversity, colonization, geographic isolation or exposure, the advent of new religious movements and religious nationalism, military rule, and ethnic resistance campaigns and their resulting governance structures. While it is beyond the scope of this project to catalogue the depth and complexity of the customary
legal traditions that evolved in each target area,\textsuperscript{175} it was evident that women across the areas predominantly used these informal justice mechanisms when seeking legal resolution. Customary adjudication practices and informal conflict resolution strategies revealed during the research process are outlined below to provide a glimpse into how women, and community members in general, may experience the customary legal mechanisms operating in their lives today.

Project participants in the target communities generally understood and utilized their relevant codified customary or case laws (for example, the Chin Special Division Act of 1948 or Burmese Buddhist Law deriving from the \textit{Dhammathats}), but populations subdivided by war, topography, access to resources or ethno-linguistic tradition naturally cultivated unique legal practices. Hence, none of the target areas could be satisfactorily described as having a singular “customary legal framework” that was recognized or applied homogenously throughout. Researchers encountered diverse social norms and diverging interpretations of law, from township to township or even village to village, particularly regarding family law and low-level crime.

Additionally, many respondents cited “customary law” (in the respective mother tongue languages) to describe local legal practices, but others used the terms “village law,” “religion law” or “culture law” to identify the basis of their legal rulings. This emphasized the multidimensional view of legal authority and its origin in a given target area, and researchers documented how, overall, the terms seemed to signify “informal law” that was not codified or necessarily derived from customary texts, but stemmed from the community’s shared historical narratives and cultural markers.

As mentioned above, family law is one area that the British singled out for governance by religious and peripheral authorities during the colonial era. Courts in Myanmar still enforce customary law in family matters, except in situations specifically governed by statutory law. For Buddhists, courts apply Burmese Buddhist Law\textsuperscript{176} and Christians may utilize the Christian Marriage Act of 1872 and the Divorce Act of 1869.\textsuperscript{177} For Hindus, customary law has been circumscribed somewhat by statute, including a law permitting remarriage for Hindu widows.\textsuperscript{178}

In keeping with the common law tradition, courts have developed case law precedent interpreting the precepts of customary law and the statutory rules. However, a member of the Yangon Regional Parliament explained her observation that judges often cherry-pick from precedents depending on personal preference or a potentially biased view of the case:

\begin{flushleft}
\textsuperscript{175} Sakhong 2003, Sadan 2013, South 2003.\\
\textsuperscript{176} Huxley 1998. According to pre-independence case law, Burmese Buddhist Law applies even where the parties are from different ethnic groups (Maung 1963). Somewhat in tension with this universal application, the highest court in Burma in 1969 held that the term Burmese customary law should be used in place of Burmese Buddhist law (Zan 2000-2001).\\
\textsuperscript{177} Christian Marriage Act of 1872, India Act XV, Burma Code XI, Divorce Act of 1869, India Act IV, Burma Code XI.\\
\textsuperscript{178} Hindu Widows’ Remarriage Act of 1885, India Act IV, Burma Code XI.
\end{flushleft}
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[The precedent chosen in a trial] depends on the judge: legally or technically speaking, we have statute law and customary law, but according to law, if they contradict, the statutory law must prevail. But depending on the judge, they can use customary law if they want. It depends on the issue and it depends on the judge’s good faith whether he will do it in this way or that way. The [Burma Laws Act] says the judge has discretionary power, so he has huge power to decide. Under customary law we have many precedents, leading precedents, and some are quite modern. Others are very discriminatory. Some lawyers are also experts in selecting the precedent that is favourable for [their case]. Some judges don’t use precedent but just decide [the case] based on how they feel.179

Community dispute resolution actors also frequently described using customary law to determine cases, and during research activities, actors from both formal and informal systems were criticized for the lack of adherence to precedent in customary law and for decision-making that hinged on certain social norms seen to negatively impact women.180 These findings appeared to be consistent with other studies of informal justice systems that identified how some adverse cultural norms embedded into customary laws and practices may deny women rights within their family, to their physical integrity, and to land.181 A ward administrator in Dala Township explained how he advised women against complaining to the police station if the husband was sexually abusive because “they must understand each other and take a look to their children. I really don’t want a small problem like that to [lead to] divorce. In my opinion, one wife and one husband is [a] good system.”182

In its 2007 CEDAW report, the Government of Myanmar stated that, according to the country’s customary (Buddhist) law, there is no discrimination between men and women, husbands and wives, or sons and daughters.183 Research for this report, however, catalogued a number of instances in which women described facing regular discrimination by customary adjudicators, especially in family law cases.

According to a township judge in Chin State, legal disputes in the township, from motorbike accidents to incidents of rape, were “mostly all”184 resolved outside the formal courts using Chin customary precepts185 as applied by members of the local village council or other respected leaders. A Chin civil rights activist in Yangon described the village council, sometimes referred to as the council

179 Yangon, key informant interview 70.
180 Mon State, data validation session 3A. See also Belak 2002.
182 Yangon, key informant interview 63.
184 Chin State, key informant interview 31.
185 The Chin Act is currently being amended through rounds of consultations with Chin civil society members, some of whom are pushing amendments to sections on women’s rights to inheritance, bride price and other perceived disadvantages to women.
of elders, as a consortium tasked with preserving community harmony through
civic and economic planning, and delivering justice through interpretation of
Chin customary law.\textsuperscript{186} According to the judge in Chin State:

\begin{quote}
In rape cases, women suffer and get unfair treatment during the process
of Chin customary law. In my opinion, they should use \textit{[the formal state
system for a better outcome. With customary law, the punishment \textit{[for the
perpetrator] would mostly be a public apology, kill[ing] and [offering]}
animals to the victim's family, or marrying the perpetrator.}\textsuperscript{187}
\end{quote}

A Chin gender rights activist in Yangon explained the historical evolution of Chin
customary law that affects its interpretation today:

\begin{quote}
In Kachin and Chin States, people are mostly concerned with social
harmony in the community instead of individual justice. An important part
of Chin history is the tradition \textit{[that] when someone is killed in one tribe,}
then \textit{[that tribe] can take revenge on [somebody] from the tribe of the}
person who committed the murder. Revenge did not have to be against
the murderer, but against \textit{[the murderer's] social group. This is similar to
[traditional] practices in Kachin State. Because of this history, today the}
elders try to seek harmony instead of individual justice, because we do
not want justice to equal revenge. This means women must accept the
elders' decisions for the \textit{[sake] of her community, and that the elders will}
make decisions that are not based on her personal justice \textit{[pursuit].}\textsuperscript{188}
\end{quote}

A woman participant in Thanbyuzayat Township, Mon State, described her
village's dispute resolution mechanism as a hybrid structure of formal and
informal actors comprised of the village administrator, his chosen secretary or
adviser, and the \textit{yat mi yat pa}, or locally respected person. "These three people
always decide on cases and they are always all men. Women should [fill] at least
one of the \[positions], especially in cases involving women."\textsuperscript{189}

In Paung Township, Mon State, a focus group respondent reported that, in her
village, the dispute resolution council had five members: the village administrator,
his secretary and three advisers of his choosing. "The [village administrator]
picks his [advisory] team from wealthy or respected people and it is their job
to investigate the case."\textsuperscript{190} She added that investigations could be difficult for
women who experienced rape or sexual harassment because, after first meeting
separately with the advisers, the woman and the alleged perpetrator were
called to the village administrator's house where they responded to detailed
questioning and were given a verdict in front of their families and the advisory
team.\textsuperscript{191}

\begin{flushright}
186 Yangon, key informant interview 78.  
187 Chin State, key informant interview 31.  
188 Yangon, data validation session 2A.  
189 Mon State, focus group discussion 51.  
190 Mon State, focus group discussion 57.  
191 Ibid.
\end{flushright}
Participants in the Mon communities visited for this research reiterated the significance of the village administrator’s broad decision-making powers, which extended (depending on village practice) to cases of rape, domestic violence, divorce, communal violence, land disputes, regulation of loan repayments, traffic accidents, and, in one village, murder. In only one of these discussions regarding the village administrator’s role did respondents reference the relevance or application of statutory law. A village administrator in Ye Township, Mon State, explained that he directly prohibits residents from approaching formal legal channels because of his distrust of the Government and the perceived benefit and relevance of local legal traditions:

> Since I am the leader, I don’t allow our people to report to the police or the court. There is too much corruption [there] and they would have to spend a lot of money to finish the cases they [submit]. Plus, [the residents] don’t know the law and they don’t know the process. For me, I use village law to decide cases, and this is the best for our people.¹⁹²

A number of other entities, while not specifically recognized by statute, are involved in local administration and leadership, including village elders and respected persons, monastery and church trust committees, socio-religious youth groups, an assortment of other cultural, musical, and women’s groups, and state-sponsored interest groups such as village militias and MWAF.¹⁹³

Of these institutions, the village elders and respected persons are the only ones reported to be playing a specific dispute resolution role,¹⁹⁴ but researchers for this project observed that members of many of these institutions, particularly religious councils, MWAF, and community-based women’s groups or village development committees, may have influence over dispute resolution based on interpersonal relationships with families and adjudicators or their inclusion as advisers on a particular case. A Kachin gender rights activist in Yangon said:

> In Kachin ethnic areas, the decision makers and rules come from cultural and religious [traditions], so the decision-making body is [comprised] of religious leaders. The [village administrator] will consult with religious leaders and whenever a woman has a case for remedy, [the leaders] say, “Why can’t you forget? It is the religious way to forgive.” Church elders are high-ranking men in the church like the pastor or reverend, and when they are involved, the ruling for women is rarely just.¹⁹⁵

In areas of Mon State and Yangon, researchers documented that the interpretation of customary law was also affected by the particular relationship between village or ward administrators and the local police. A village administrator in Mon State explained that his office’s location next to the police station obliged him to

¹⁹² Mon State, key informant interview 48.
¹⁹⁴ Ibid., pp. 34, 63.
¹⁹⁵ Yangon, data validation session 2A.
exercise caution when using “Buddhist law” to resolve disputes because, “The police want us to use government [statutory] law and if they find out we decide cases ourselves [using] customary law, sometimes they make us [decide] again or let them decide.”¹⁹⁶ In contrast, the *yat mi yat pa* in a different village of the same township said:

> Some police in our village use customary law, too, because they know our situation and that people won’t like it if they use the country [statutory] law. Even for rape cases, they make the men pay compensation, same as we do. We have a good relationship with them and sometimes we make decisions together.¹⁹⁷

Key informant interviews with human rights defenders and civil society activists also illustrated the influence that MWAF members exercised over formal and informal adjudicators in some target communities. In Mon State, a women’s rights advocate said, “If MWAF gets involved, the man will usually do whatever [they] say because [he] knows if the case is reported to the court or police [by MWAF] then he will lose.”¹⁹⁸ Reasons cited for this persuasive authority largely centred around impressions that MWAF chairwomen and volunteers were typically the wives or family members of powerful local figures, for example, village or ward administrators, township civil servants, members of the judiciary or wealthy businesspeople. Declarations of MWAF’s legal sway, however, were significantly offset by several diverging opinions shared in various focus group discussions. Many women said that, although they were aware of the existence of a MWAF office in their village or town, they were unclear what its mandate was, who worked there and who it intended to serve. In Yangon, a civil rights activist joked that the only activity he had witnessed around his nearby MWAF office was “members watering the trees, but they still don’t grow.”¹⁹⁹ In Kachin State, a woman research respondent said, “We never contact [MWAF] because they only help elite women when they have problems.”²⁰⁰ According to a focus group discussion participant in Mon State:

> [MWAF] is just a name, it does not do anything for women. There is a representative in [the village] but she only assists her friends. In other villages, even if [MWAF has] an office, the [residents] couldn’t tell you where it is or what they do. For us, we know they are there, but we don’t talk.²⁰¹

There is a potential for “major human rights consequences”²⁰² when applying customary law in family law matters, particularly due to the problematic trend of attempting to “balance” two objectives that may clash: “gender equality” and

¹⁹⁶ Mon State, key informant interview 45.
¹⁹⁷ Mon State, key informant interview 49.
¹⁹⁸ Mon State, data validation session 3A.
¹⁹⁹ Yangon, key informant interview 78.
²⁰⁰ Kachin State, focus group discussion 53.
²⁰¹ Mon State, focus group discussion 56.
“the right to culture/religious freedom.” Indeed, the importance of maintaining and protecting cultural identity came up in interviews and discussions with project participants numerous times, highlighting that even when inequalities for women were acknowledged or visible to the community, there was sincere concern (expressed by women and men) about adjusting certain harmful practices ingrained in a tradition without threatening the group’s practical and historical cohesion.

Regarding informal justice systems in particular, “custom or religion-based [systems] are especially likely to uphold rather than to challenge the values of the society around them, including attitudes and patterns of discrimination,” but at the same time, “the flexible and adaptable approach of customary law can allow it to change in ways that reflect changing values in society.” This latter point is central to an understanding of how the informal legal mechanisms employed in Myanmar should not, in themselves, be viewed as barriers to justice. Instead, they serve as established, functional and dynamic entry points for improving women’s access to justice. In combination with targeted gender sensitivity or restorative justice interventions, customary and informal justice mechanisms have the reach, relevance, sophistication and pliability to substantively address the justice needs of the women who use them. According to one member of a Kachin women’s group affiliated with the KIO:

> Customary laws are best [for us] so we have to do more research [to] change them, adapt them, to be more in favour of women because this is what people are using. Women should be able to decide on [these changes], and to have more decision-making power in terms of divorce, inheritance and custody of children.

A member of Myanmar’s Pyithu Hluttaw, the Lower House of Parliament, said that while women could benefit from the range of avenues for justice delivery created by the plural legal system, the lack of information-sharing between mechanisms hampered efforts to ensure that women’s legally enshrined protections were equally adhered to and advocated for in both:

> […] there is a big knowledge gap between what the Hluttaw is doing at a high level, the rights that exist and the [legal] tools women have, and what is happening at the grass-roots level – how law is dealt with on the ground – that must be filled in. We are in the process of eliminating so many old laws, but at the grass-roots level they are left without information about what has changed, or what should be pushed for change, and they are the ones making decisions that affect women’s lives everyday.
WOMEN IN MYANMAR’S PLURAL LEGAL SYSTEM

Myanmar’s history has given rise to a diverse, layered legal order that is plural in various senses. British rule left a legacy of colonial statutory and common law, while customs and traditions dating back hundreds of years prior to colonization continue to thrive outside the formal legal system. At a time when successive military regimes issued edicts that reshaped the national legal framework and shook public faith in government institutions, decades of civil war and attempts at self-determination by ethnic minority groups resulted in the formation of parallel justice systems.

Myanmar’s current legal pluralism may partially be attributed to the existence of a separate legal track, the courts martial for matters involving military personnel, and, most recently, to the transition to a semi-civilian Government that ushered in the latest generation of legal and institutional reforms. Like many other countries, Myanmar is also experiencing “a new legal pluralism that represents a global shift from the state as the central source of legal ordering”207 due to its status as a signatory to several international treaties (see Box 2), as a member of ASEAN and given its increasingly open economy.

Box 2: Myanmar’s relevant international obligations

- Convention on the Elimination of Discrimination of All Forms of Discrimination against Women: Myanmar acceded to CEDAW in 1997 and is thus obligated to take all appropriate measures to eliminate discrimination against women. CEDAW Articles specifically call for the state “[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices,”208 to accord “women equality with men before the law,”209 and “[t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”210 Signatories are required to provide progress reports to the CEDAW Committee,211 the most recent Myanmar report was submitted by the Government in 2007 (with a follow-up report in 2010). Myanmar has not signed the Optional Protocol to CEDAW, which provides a communication procedure for individuals or groups to submit complaints to the Committee. Myanmar has not yet incorporated its CEDAW obligations into domestic legislation, thereby allowing existing laws to remain incompatible with CEDAW’s provisions.212

207 Ursua 2014, p. 3.
208 CEDAW, Article 5.
209 Ibid., Article 15(1).
210 Ibid., Article 2(c).
211 Ibid., Article 18(1).
212 Gender Equality Network 2013, pp. 5-6.
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- **Convention on the Rights of the Child.** The CRC provides an extensive list of obligations of the state to all children under the age of 18.\textsuperscript{213} Myanmar acceded to the CRC in 1991 and passed its national Child Law in 1993, which was amended in 2012 to include children up to age 18.\textsuperscript{214} A United Nations Children’s Fund (UNICEF) situation report identified ways in which Myanmar was failing to meet its obligations under the CRC, however, including deficiencies in the prevention of sex trafficking of young women.\textsuperscript{215} Myanmar also acceded to the CRC’s Optional Protocol on the sale of children, child prostitution and child pornography (2012), and signed the Optional Protocol on the involvement of children in armed conflict (2015, not yet ratified).

- **United Nations Security Council Resolutions 1325, 1820 and 1960.** Resolution 1325 recognizes the need for women’s full participation in peacebuilding. Resolution 1820 calls for steps to effectively prevent and respond to acts of sexual violence during conflict. Resolution 1960 calls for monitoring and reporting on sexual violence in conflict. Despite ongoing conflict and explicit needs in relief and recovery, Myanmar does not yet have a national action plan on 1325.

In addition, various forms of local governance still exist in Myanmar today, some of which have dispute resolution and discretionary powers recognized by law. The Ward and Village Tract administration system, discussed in more detail below, is one prominent example of a structure that long predates the current, state-sanctioned legal configuration, but has been integrated into the state system at the lowest level of governance.\textsuperscript{216} Depending on the location in Myanmar, a number of non-state governance and dispute resolution mechanisms may be operating alone or to differing degrees, such as councils of respected village elders,\textsuperscript{217} IDP camp management structures, or ethnic armed organizations that control territories and administer their own laws. Customary practices and laws that are not codified and do not receive formal legal recognition are nonetheless still in use around the country. Finally, Myanmar’s Buddhist “Sangha,” or community of monks, and the State Sangha Maha Nayaka Committee that administers Buddhist institutions establish another layer of recognized voices, even if not interpreted as giving formal legal directives, which may influence notions of justice and codes of conduct.

Research revealed that the ways in which the formal and informal legal systems interact (or do not) were frequently governed by interpersonal relationships and prominent personalities in a given community. In some villages, the local police and village administrators collaborated closely but described using customary, not statutory, law to inform their decision-making. In other communities,

\begin{itemize}
\item Convention on the Rights of the Child, Article 7.
\item Child Law (1993), Section 3(a).
\item UNICEF 2012, p. XXIII.
\item UNDP 2015, p. 7.
\item MDR and Kempel 2012, pp. 22-25.
\end{itemize}
councils of elders or religious leaders interpreted customary laws and applied normative principles while dissuading resident women from approaching formal legal institutions.

In Myitykina and Yangon, lawyers advised potential clients against pursuing a case with police or courts to avoid the costs and time delays incurred through formal channels, counseling them instead to find resolution through whatever informal dispute resolution mechanism was available to them. As discussed below, the village administrator position is itself placed at the country’s point of legal intersection: serving as community leader and keeper of the peace, government interface and dispute adjudicator based on community expectations, and grounded in an individual’s personal choice of customary, informal, or statutory legal tools.

Internationally, recent years have brought an upswing in research and reporting on the potential for gaps in legal protections and negative human rights outcomes that may develop within the context of legal pluralism. In 2012, UN Women described three specific challenges to women’s rights posed by plural legal systems around the globe:

First, non-state justice systems and plural formal laws based on specific interpretations of religious or ethnic identity sometimes contain provisions that discriminate against women. In common with all justice systems, they tend to reflect the interests of the powerful, who have a greater say in shaping and defining laws and values. Second, the practical complexity of legal pluralism can create barriers for women’s access to justice by, for example, enabling the powerful to “forum shop” to gain legal advantage. Third, plural legal systems, defended on the basis of culture and religion can be resistant to reform in favour of women’s rights.

Hence, many of women’s barriers to justice found in the formal legal system can exist in informal mechanisms, and vice versa. Attorney Evalyn G. Ursua states that women “generally suffer discrimination” in plural legal systems wherein different rules govern depending on the religious or cultural identity of the particular individual. Within this marbled legal landscape, the existence of inequitable laws under a religious or cultural scheme “effectively denies women justice for violations of their human rights, exacerbates their poverty, and restricts their political participation in the public sphere.”

Women interviewed for this report described their justice-seeking options in Myanmar’s plural legal system as being wedged between male-dominated, informal decision-making bodies, gender bias in the judiciary, certain discriminatory customary laws, deficient national legislation, low-levels of awareness of and access to legal aid services, social pressures within family and

218 UN Women 2012, pp. 68-69.
220 Ibid.
community, and a lack of faith in the formal legal system as an adequate delivery service for justice. At the same time, and despite limitations, women were actively choosing means for dispute resolution and personal coping strategies within their range of options – they were not passive by-standers or one-dimensional “victims” of these circumstances. In the absence of practical or desirable justice pathways, women still sought to resolve their legal disputes by using existing, albeit reportedly unsatisfactory, legal mechanisms, or by cultivating resolution through personal strength, friends and family, community groups, or religious beliefs.

Interviews throughout the target areas revealed that the potential gray areas that develop between overlapping customary and state laws and procedures particularly impacted women. Barriers to women’s access to justice appeared to be reinforced by partiality and the ad hoc nature of decision-making reported among many informal adjudicators and formal legal practitioners. In instances where legal jurisdiction was in question or when arbiters did not know relevant laws or case precedent, legal decisions were often partly influenced or wholly determined by certain biased gender norms. Additionally, women related very few accounts in which they perceived a sense of importance being placed on their justice needs by the varying socio-political, ethnicity-based, religious or legal institutions, particularly at a time when, according to a human rights defender in Mon State, “the women’s rights agenda is expected to wait for the peace process, the elections and political dialogue to [conclude] because our leaders think it’s damaging to our more important goals to talk about it now.”

Figure 2: Women’s access to justice ecology – barriers and enablers

221 Mon State, data validation session 3A.
The subversion of women’s justice needs to other political priorities and the plurality of legal authority and decision-making in Myanmar are also captured by four controversial “Race and Religion Protection Laws”222 adopted by the Myanmar Parliament and signed by President Thein Sein in 2015. Three of the laws criminalize polygamy, require citizens wishing to convert religions to first obtain consent from a state board, and grant authority to regional and state governments to request presidential approval to impose birth spacing restrictions on residents. These laws were strongly endorsed by Ma Ba Tha, the committee that currently leads Myanmar’s nationalist Buddhist movement, and each has been criticized for violating human rights and religious freedoms in Myanmar, and for appearing to implicitly target the country’s Muslim population. The fourth law, the Myanmar Buddhist Women’s Special Marriage Law, regulates the marriage of Buddhist women to non-Buddhist men. A number of human rights defenders and women’s rights activists have been rankled by the law’s provisions that allow local administrators to publicly post an interfaith marriage application to collect any objections and that necessitate parental consent if the woman is under 20.

These laws are not in fact new, but simply adapt and revise223 the Buddhist Women’s Special Marriage Law of 1954:

What is different now is that social conditions have changed dramatically, and there is little evidence of large numbers of non-Buddhist men marrying Buddhist women. Even if there was, the law seems to discount the fact that a Buddhist woman may willingly choose to marry a non-Buddhist man, and so in this way it potentially limits the freedom of the women it claims to protect.224

Whether these new laws are ultimately enforced or fall into disuse,225 they exemplify women’s position at the centre of Myanmar’s legal plurality. First, because they affect Burmese Buddhist Law and Islamic Law in some ways, they demonstrate how the recognition of customary and religious personal law is subject to legislative change that may be gendered or politically motivated. Throughout the legislation’s drafting and parliamentary submittal process, women and their rights to marriage, religious conversion, and sexual reproduction were coopted as the stage on which a multitude of political, religious, civil society and international actors debated law that, when enacted, directly contradicted the rights afforded to women in other relevant legal instruments.

Competing forces that worked against women’s access to justice were also reported in Mon and Kachin States, where research was conducted in areas

222 These are the Monogamy Law, Religious Conversion Law, Myanmar Buddhist Women’s Special Marriage Law (Interfaith Marriage Law) and Population Control Law.
223 Crouch 2015a, p. 4.
224 Ibid., p. 5.
225 Ibid., p. 4.
neighbouring territory administered by ethnic resistance groups. Participants communicated how the unique intersection of state and non-state justice structures that included not only police, village administrators and traditional councils, but also military or militia members, non-state judicial organizations, IDP camp management, and international organizations and donors could result in women’s refusal or resistance to engage with any one mechanism due to the political message attached to the decision. A human rights activist in Myitkyina said:

To understand the legal situation in Kachin State, you have to understand the political and social context here. When you say, “government legal system,” [ethnic Kachin] people will want to know, “Which government are you talking about?” It is the same for laws: which laws, and for who? Depending on the case, people here could use the formal legal system in Myitkyina or the [KIO] headquarters in Laiza, or they can solve in [the] Kachin traditional way or through the church. For women, the decision of where to go would be very [scrutinized] and would probably be made for them. Or more [likely], they would stay silent.227

Several project respondents asserted that women’s access to justice would be improved by increasing the number of positions filled by women across the various justice systems, but not through this method alone. Women, too, were often seen as perpetrators of discriminatory norms and justice limitations that treated women’s legal concerns differently than men’s. Numerous focus groups called for gender sensitivity and women’s protection trainings that target women, as well as men, who operate in community legal aid networks, traditional or religious committees, the police force, village and ward administration offices, MWAF and the judiciary. According to a gender rights activist in Yangon, “In our country, there are lots of women who are gender blind and who discriminate against women. We cannot forget them in our trainings.”228 The manager of a legal aid network said:

Woman judges announce punishments at trial without the lawyers present, or lawyers may take [their lunch break] and return to find the [woman] judge has forced a confession out of the accused. We see terrible attitudes among women judges; it’s no different from men.229

Women reported similar experiences of normative bias or subjective application of justice principles by women members of religious committees, political parties and local MWAF offices. An ethnic Mon women’s rights activist said:

226 Interviews were conducted with community members living in or near territory administered by the KIO and the NMSP.
227 Kachin State, key informant interview 15.
228 Yangon, key informant interview 69.
229 Yangon, key informant interview 71.
It is true that men do not realize the value of women in our society and do not see why they should contribute. But many women feel this way, too. Now we see many women [participating] in politics and civil society, but are they talking about gender? Are they trying to change the system or do they treat women better than the men [do]? No, because they are products of our culture [just] like the men are.230

According to the director of a women’s rights organization in Yangon:

We cannot say men are more corrupted and women are less corrupted, but we can ask, “Who is more allowed?” Men are more allowed to be corrupted, to be flaw[ed], to make mistakes, and women are less allowed.231

Special Area of Legal Overlap: Ward and Village Tract Administrators

Local administrative structures at the village, ward and township levels are not only a key characteristic of civic life and political authority in Myanmar today, but have played pivotal roles for centuries: tracing their origins to the time of the Bamar monarchy232 and being strategically utilized by the British as an instrument for indirect rule.233 In 1907, the British passed the Village Act, which “codified the roles and responsibilities of village heads” and mandated that they “suppress disorder and strengthen the hands of the [British] district officers.”234 These roles were essentially maintained post-independence and continued under different administrative structures throughout the various military governments:235

The smallest formal administrative unit [in Myanmar] is the village, with several grouped together into village tracts. Urban wards, towns and village tracts are grouped into townships, where the lowest levels of government offices are generally located. Collections of townships are organized as districts, which in turn form the region or state.236

In 2012, Parliament passed the Ward or Village Tract Administration Law, which sets forth the current structure and, for the first time, provides for the election by secret ballot of village tract administrators.237 The new law states that the ward or village tract administrator will be responsible for a long list of duties including “security, prevalence of law and order, community peace and tranquility, and carrying out the benefit of the public;” “carrying out the functions and duties relating to disciplinary matters of the persons who live in the ward or the tract;” “safeguarding the rights of persons living in the ward or tract;” and arresting

230 Mon State, data validation session 3A.
231 Yangon, key informant interview 78.
232 Saw and Arnold 2014, pp. 4-5.
233 Ibid., pp. 5-6.
234 Ibid., p. 6.
235 Ibid., pp. 7-11.
237 The Ward or Village Tract Administration Law, Article 13(a-c, k, m, q).
“notorious lawless persons and thieves,” offenders who committed crimes in the presence of the administrator, and individuals gambling in a public place.\textsuperscript{238}

While none of the itemized responsibilities explicitly reference adjudication or enforcement of legal matters, the duties related to “law and order” and “peace and tranquility” and the express power to arrest individuals (in certain circumstances) suggest that an administrator’s responsibilities will almost inevitably interlace with dispute resolution roles and law enforcement activities. Notably, figures released by the General Administration Department in 2014 showed that women occupied only 42 of the 16,785 village tract administrator positions in Myanmar at that time, or 0.25 per cent.\textsuperscript{239} More recently, at least one woman was elected as village tract administrator in local elections in Mon State.\textsuperscript{240}

In research for this study, community discussions underscored the formidable and central role that village and ward administrators played as justice “gatekeepers” - front-line dispute resolution practitioners who regularly exercised the explicit and implicit powers listed above. According to one project respondent, “I have no experience with the police or courts or lawyers. It is only the ward administrator that makes decisions that affect my life.”\textsuperscript{241} Administrators “[r]esolve disputes among villagers and with other villages, and take action in the case of theft, violence, social/drunken misbehaviour or when a villager fails to comply with rules and regulations.”\textsuperscript{242} They can also intervene when a villager is arrested or charged with a crime by advocating that legal action not be taken against the villager or by providing a financial or verbal guarantee on his or her behalf.\textsuperscript{243}

During a focus group discussion in Tamwe Township, Yangon, one woman said the process of submitting a legal case for adjudication was complicated because a “recommendation letter”\textsuperscript{244} from the relevant Ward Administrator was needed before filing a complaint with police, otherwise “the police station will not accept the case.”\textsuperscript{245} If the ward administrator is unwilling to cooperate, swayed to protect the perpetrator, or disliked by the individual or her family, this letter was unlikely to be secured. The member of a ward-based board of elders in Yangon, a group of at least two or three individuals who advise the ward administrator, explained the steps necessary to bring a case to the police and underscored the number of people with discretionary power over legal reporting and response:

\begin{itemize}
\item 238 Ibid.
\item 239 Minoletti 2016 (forthcoming), p. 10.
\item 240 Weng 2016.
\item 241 Yangon, key informant interview 81.
\item 242 MDR and Kempel 2012, p. 20. The researchers visited 16 different villages in four different states (Chin, Mon, Rakhine and Shan).
\item 243 Ibid., p. 58.
\item 244 Yangon, focus group discussion 85.
\item 245 Ibid.
\end{itemize}
Whenever there is a situation that arises in the community, the ward administrator and board of elders discuss what to do [...] for the good of the community. If it is a big thing like a murder, we would send the case to the police. Sometimes we can give a punishment, [but] the punishment would be small, like making the perpetrator clean [a] plot [of land] in the community.

Every dispute always comes to the ward administrator first, and then we refer it to the police, if necessary. It is never referred directly to the police. If the person was hurt in a fight, the ward administrator must give a letter of recommendation before the police will take the case. [...] This applies to all cases, even the murder cases. Even the hospital will not [provide] medical treatment for the victim who [has] an injury, unless he has a recommendation from the ward administrator. If the victim has not gone to the ward administrator first, the hospital will receive the victim but will not provide treatment until they communicate with the police.  

Similar types of advisory committees that counselled ward and village administrators were described in research areas in Mon and Kachin States, but appeared to enjoy varying degrees of influence and levels of community trust. For women, this front line of decision-making authority was often criticized for conducting its activities too publicly or being too steeped in customary norms to effectively and sensitively accommodate their justice needs, particularly in cases of domestic violence and sexual assault.

Project researchers observed that despite the inclusion of village tract administrators in the elected governance structure, and a widespread awareness of the 2012 law, many respondents still situated these individuals within their local or customary legal tradition. Participants frequently described their administrators’ adjudication methods as based on “village law” or traditional, ethnic or religious principles, not “government law.” Several research respondents voiced satisfaction with their increased agency to contribute to and influence the selection process, particularly when it resulted in the expulsion of administrators they felt had dominated local governance structures for too long. But many did not equate this shift with an appropriation of the local administrator’s role by the formal Government. For this reason, women’s perceptions and experiences with village tract and ward administrators were predominantly described, and are thus presented herein, as being part of the customary legal landscape.

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246 Yangon, key informant interview 81.
247 Administrators are not elected directly by the people. Instead, each “head of 10 households” in the relevant ward or village submits a name for consideration. All “heads of 10 households” in that jurisdiction then vote on the compiled list of names by secret ballot to elect an administrator. See the Ward or Village Tract Administration Law, Chapter IV.
RESEARCH FINDINGS

Improving women’s access to justice in Myanmar will require a long-term effort involving a broad range of interventions:

- Integration of gender into national legal reform and the adoption of comprehensive women’s protection laws,
- Uniform application of rule of law conventions,
- Gender sensitivity training within the formal judiciary and traditional dispute resolution bodies,
- Women’s increased participation as decision makers and adjudicators at every level,
- Broadly available legal awareness training and legal aid services, and
- Community-led transformation of specific, discriminatory norms.

Research for this report, however, demonstrated that for the most immediate and widely felt impacts, women’s access to justice initiatives must acknowledge and connect with women where they currently are: predominantly engaging with community-based legal mechanisms or not reporting cases at all.

While formal legal players and processes had not regularly impacted the lives of many women research participants, the status of state legal institutions was frequently viewed as a benchmark for the status of justice reform and women’s standing in the country. Community members and legal practitioners alleged that persistent corruption among law clerks, police officers and court judges sustained an environment in which local adjudicators and administrators felt free to carry on their own practices of bribery or bias.

Respondents who had not utilized community-based legal mechanisms explained how the local practices still contributed to a general understanding of women’s normative roles and restrictions, for example, due to the absence or low levels of women in most justice “gate-keeper” roles like the heads of 10 or 100 households, traditional councils of elders and village administrators. These perceptions revealed a potent symbolism embedded in Myanmar’s legal systems: Even when women did not engage with formal or informal justice mechanisms, they viewed them as representational of their rights.
WOMEN’S MOST COMMONLY CITED JUSTICE NEEDS

Domestic Violence

As mentioned above, this project’s research framework did not establish a particular legal or rights infraction to investigate, but instead asked research participants to describe what justice issues they saw confronting women in their communities. It was therefore highly significant that in 80 per cent of focus group discussions, respondents named some form of domestic violence (physical, verbal or emotional abuse) as the most common injustice women faced. In interviews, these violations frequently correlated with other social threats like drug abuse, alcoholism, joblessness, land confiscation, food insecurity or military aggression against civilians, and were widely seen as commonplace in each of the target research areas:

After I got married, when I cooked and the food did not taste good, my husband would slap me. This is usual. I deserve this slap because I cannot cook very well. If a husband is drunk, he will curse his wife, use bad words, slap, beat or punch. To be a good woman we do not fight back against [him]. Many women have this experience and I don’t know any [examples] of [women] submitting a [legal] case because most just forgive their husbands.248

At the time of publication, Myanmar’s only existing legal instruments to criminalize intimate partner violence were found in the Penal Code of 1860. Sections 319-338 on voluntarily causing injury and Sections 349-358 regulating assault may be used to charge perpetrators of domestic violence,249 but lack the specificity and modern legal language needed to effectively punish or prohibit sexual violence against women. Furthermore, “there are no mechanisms for restraining orders that would enable a woman to prevent a violent spouse, relative or boyfriend from having contact with her.”250

While many research participants described domestic violence251 as women’s “biggest problem in our community,”252 they also explained the low likelihood of the issue being treated as a legal one. For a number of reasons detailed below, not the least of which is the absence of specialized legislation and services to stop violence against women, not one of the male or female focus group participants knew of a woman who had submitted a case of domestic violence through formal legal channels. Instead, mapping activities across the target areas illustrated that most incidents of domestic violence were never reported to any dispute resolution mechanism, formal or informal:

248 Yangon, focus group discussion 88.
249 Gender Equality Network 2013, p. 10.
250 Ibid.
251 Typically referred to as “domestic fighting” in Myanmar language interviews
252 Mon State, key informant interview 48.
In my neighbour’s house, that couple is fighting a lot. Her husband says she has to rely on him so he can do what he wants and [he] always beats her. But she does not report to [any] authority. Sometimes she leaves her house but her husband goes to get her and she goes back home with him.\(^{253}\)

Women research respondents in Chin State linked the local incidence of domestic violence to poverty, joblessness and alcoholism, but also identified general social power imbalances that magnified conditions for abuse. Participants cited for example, women’s unequal compensation for day labour (compared to men) and discriminatory treatment of ethnic Chin women and girls by government civil servants (in local schools or medical facilities). It was also stated that women chose not to discuss or report experiences of domestic violence because “the husband loses face.”\(^{254}\) A woman focus group participant in Chin State said:

My religious elders always tell me not to beat my husband back, [but] the culture [has a saying that] “you can beat your wife like you beat your drum.” Even if the husband likes the wife and wants to give [her] freedom, the husband’s family can control her [or] kick her out. These are our Chin traditional practices, and the women are very disadvantaged.\(^{255}\)

When cases of domestic violence were brought to an adjudicator, respondents reported that they rarely rose above the level of local mediation conducted by the village elders, yat mi yat pa, resident MWAF office or village administrator. Interviews indicated that the ultimate goal of these mediations was the restoration of peace between husband and wife. The former leader of a women’s union in Myitkyina, Kachin State, explained the standard nature of dispute resolution for domestic violence in her community:

Let’s say I was beaten by my husband. I will tell my uncle and my brother, and my brother and [my] other uncles will ask the [council of] elders belonging to [our] group [to get involved]. The elders will find my husband’s family, and they will talk, and his family will warn my husband. That is all. This is happening in my own family still today. [The process is] lacking [the ability to] resolve women’s problems. It is not enough.\(^{256}\)

According to a youth leader in Mon State, married women who brought a case of domestic violence to his village administrator were advised to return home and wait anywhere from seven days to three months before taking action against the husband. “If [the village administrator] makes the decision [to approve separation] too fast, it is not good for the couple and it looks like he wants them to divorce.”\(^{257}\)

\(^{253}\) Kachin State, focus group discussion 28.
\(^{254}\) Yangon, data validation session 2A.
\(^{255}\) Chin State, focus group discussion 41.
\(^{256}\) Kachin State, key informant interview 9.
\(^{257}\) Mon State, key informant interview 50
Only in severe cases of brutal or recurring violence did respondents say the couple would be granted separation, highlighting another area of vulnerability: The decision about whether an incident of violence was “severe” or worthy of substantial intervention was dependent upon the mediator’s view of the circumstances, not the woman’s. A ward chairwoman of MWAF in Yangon said:

> When there is an issue about violence against women, if the case arises in our community, then I have to inform the chairwoman of the township [MWAF] office and then the chairwoman will tell me to take care of the case so I will mediate by myself. If the case cannot be resolved at my level, then I refer [it] to the district level [MWAF] office. But most of the cases can be resolved at my level. Almost all [cases] are for problems between husband and wife, we can say kinds of domestic violence, but [are] not so serious.\(^\text{258}\)

An adjudicator’s determination of whether a case was serious or not appeared to diverge in a number of instances from women’s own impressions of the situation, and to be frequently influenced by traditional or social norms regarding what is expected within marriage. A former MWAF chairwoman in Yangon said:

> Even MWAF [members] think that husbands and wives fight all the time [but] will love each other again. It’s like our [Myanmar] saying that “the husband and wife are like the teeth and the tongue:” Even when the teeth bite, the tongue can’t stay away.\(^\text{259}\)

A Yangon-based member of Parliament also described how normative interpretations of marital disputes or abuse similarly shaped decision-making in courtrooms:

> I was a [law] lecturer at university and now many of my students [have become] judges at the township level. When I ask [them] how many divorce cases [they] have, they say, “Oh, I have 10 divorce cases,” and when I ask whether [they] ever allowed [the couple] to get divorced, they say, “No, why would we let them divorce? Why did they marry? We have to favour their kids, their future—women must be patient and sacrifice—so we hardly let them divorce.” Many of my students still decide cases in this way; men and women judges advise the couple to take six [or] eight months to think. Only if the man has another wife, or maybe two or three wives, then of course they’ll let them divorce. Otherwise, they don’t.\(^\text{260}\)

Private Space Outside the Law

Although respondents in each target area named forms of domestic violence as the primary injustice facing women in their communities, this observation was often accompanied by the belief that the law does not or should not regulate

\(^{258}\) Mon State, focus group discussion 57.

\(^{259}\) Yangon, key informant interview 81

\(^{260}\) Yangon, key informant interview 70.
domestic problems. In interviews with Mon and Bamar Buddhists and Chin and Kachin Christians, women and men cited a “private space” recognized by the community that governs family matters and exists outside the law, primarily regarding the relationships between husband and wife, and between parents and children. This private space appeared to work against women’s access to justice in two principal ways: 1) reducing the likelihood that women reported cases of domestic violence or other forms of abuse and 2) heightening family and community members’ resistance to intervening when abuse occurred. According to a woman respondent near Myitkyina, Kachin State:

We don’t need to report family problems and they should not [be] solved by the laws. Same for issues between neighbours. We should not get involved in these problems, they are none of our business.261

In Mon State, a village administrator said:

Even though there is a lot of domestic violence, the women don’t want to report [it] to me. For example, there is a case where a husband beats his wife badly almost everyday when he is drunk. We know it shouldn’t be this way, but the woman never comes to report so there is nothing we can do.262

In a focus group discussion in Mon State, a woman participant described how eyewitnesses, too, may decline to provide testimony to local authorities because:

[...] they say it’s the married couple’s problem and they don’t want to get involved. Sometimes the eyewitness will answer questions if [the victim] is a friend whom they want to help, but mostly if we’re not close and the village head asks, “Did you see her husband beating her?” [the eyewitness] will not respond because they are not friends and [s/he] does not want to get involved in these personal problems.263

The reported prevalence of overlooking abuses in the home, and the general resistance to pursuing relevant legal actions, appeared to extend across community-based practices and up through formal adjudication channels. A former MWAF chairwoman in Yangon said:

Nobody wants to get involved with marital disputes. The local police stationed near the ward administration office do not want to be disturbed with these types of cases. The hospital does not take good care to treat [the women’s] injuries. If a woman uses the court, [the process] takes too long and she will lose a lot of money [due to legal fees and absence from work]. Neighbours avoid [involvement] and act like they hear nothing. [They see] the problems between husband and wife [...] as a

261 Kachin State, key informant interview 3.
262 Mon State, key informant interview 48.
263 Mon State, focus group discussion 57.
normal occurrence] and nobody wants to be involved; even the ward administrator doesn’t want to act. Those who have this problem feel discouraged because they know nobody wants to deal with the case.264

Women further described how the paucity of direct and sober responses to domestic violence by local adjudicators, police, community members, friends and neighbours contributed to the low incidence of legal reporting and perpetuated a culture of impunity for offenders. A women’s rights activist in Yangon said:

We have to identify mental and physical abuse as domestic violence because, in the village, they believe men can beat and say bad things to his wife – we don’t know beating is a legal issue. Parents and family members hear their daughter [being beaten] and think it is [the couple’s] affair, and if we say something, then we are the troublemakers.265

In a focus group discussion in an IDP camp outside Myitkyina, a woman reported that a man in her camp:

[…] became so violent that neighbours wanted to report [him], but the woman said [that] he is her husband so he has the right to beat her. Women generally believe that this is our fate and women’s groups back off because the wife doesn’t want their intervention.266

Project research highlighted how essential legislative reforms must be accompanied by a growing accommodation for law within the domestic sphere. According to a women’s rights activist in Yangon, “We have to change the mentality of sexual violence from private family matter to crime.”267 A former judge who served for 10 years in a township court concluded:

People will say we don’t need domestic violence protection laws for women because criminal laws that regulate all people already exist, [but] there is more violence in the home than in the street and our laws must show that.268

New women’s protection laws in Myanmar would better satisfy CEDAW requirements and:

[…] could include mandatory sensitivity and gender training for law enforcement officials, the judiciary and health personnel, as well as community and public education programs to increase understanding among men and women that violence includes emotional, verbal, sexual and physical abuse, and that it is not acceptable.269

264 Yangon, key informant interview 66.
265 Yangon, key informant interview 73.
266 Kachin State, focus group discussion 25.
267 Yangon, key informant interview 72.
268 Yangon, data validation session 1A.
269 Gender Equality Network 2013, p. 10.
Incidents of Rape

Incidents of rape were reported in several focus group discussions and key informant interviews as grave violations affecting women across the four target areas, but were cited less than accounts of domestic violence. As mentioned above, however, researchers never introduced the subject of rape during focus group discussions, which were designed to grant space for women to define their own justice landscape and needs. Therefore, the frequency of its mention, due to personal experience or general awareness, was deemed significant.

Rape is prohibited by Section 375 of the Penal Code and is punishable by up to 10 years’ imprisonment.\textsuperscript{270} According to the law, rape is defined as sexual intercourse with a woman under any of the following five circumstances:\textsuperscript{271} 1) “Against her will,” 2) “Without her consent,” 3) “With her consent, when her consent has been obtained by putting her in fear of death or hurt,” 4) “With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married,” and 5) “With or without her consent, when she is under fourteen years.”\textsuperscript{272} Marital rape is not recognized unless the woman is under the age of 13,\textsuperscript{273} although an amendment to this limitation may be proposed in the draft National Law on the Protection and Prevention of Violence against Women.

Section 354 of the Penal Code may be applied in cases of sexual assault because it criminalizes force “with intent to outrage [a woman’s] modesty”\textsuperscript{274} and provides for punishment of a prison term of two years or a fine or both. As noted by the Gender Equality Network, however, “Since ‘modesty’ is not defined by the legislation, it is not certain what offences these provisions capture.”\textsuperscript{275}

During project activities, respondents either described cases of rape in their own communities, had heard of cases in neighbouring villages or understood the issue as a threat to women despite having no personal knowledge of a specific local occurrence. For example, during focus group discussions in Mawlamyine and the seven villages in Mon State visited by researchers, four groups cited specific rape cases within their villages, one group referenced a case in a nearby village, one named rape as an injustice but without indication of its local prevalence, and two groups depicted rape as a legal problem facing women but had never heard of occurrences in their villages.

Almost all specific rape cases mentioned during data collection were resolved through customary methods, by the village administrator, or were never submitted for adjudication. Outside key informant interviews with legal practitioners or civil society leaders, no respondents who described knowledge of a rape case had seen it submitted to the formal legal system:

\textsuperscript{270} Penal Code, Section 376.  
\textsuperscript{271} Ibid., Section 375.  
\textsuperscript{272} Ibid., Section 375.  
\textsuperscript{273} Ibid., Section 375.  
\textsuperscript{274} Penal Code, Section 354.  
\textsuperscript{275} Gender Equality Network 2013, p. 9.
In my village, a four-year-old girl was raped by a Grade 9 student. The girl was in pain and told her mother but her mother just stayed silent. After a week, the girl was in a lot of pain and had to go to the clinic. At that time, one woman who worked at an NGO knew about the incident and went to ask the girl what happened, but the girl did not answer because she felt shy, she just said that she had pain. So the woman went to the village headman and he asked the boy’s family to give 500,000 kyat to the girl to finish the case. Situations happen like this a lot in our community.

The negotiation and payment of compensation was also described as frequently handled directly by the perpetrator or his family, thereby further intercepting intervention by formal or informal legal actors. During a focus group discussion in Yangon, a woman participant said:

A young domestic worker was raped by the son of the house owner and got pregnant. She was given some money by the mother at that house and had to leave. We cannot say, “Do you think she got justice?” No, we don’t, but the girl has to be satisfied.

In the customary adjudication processes described by research participants, a range of formal and informal actors played some contributing role: differing combinations of local respected elders, village and ward administrators, police officers, lawyers or legal aid representatives, and members of community-based organizations and local MWAF offices. In this, the pluralistic nature of the legal system was highly visible and particularly contradictory to women’s individual justice objectives: The task of resolving rape cases often devolved to decision makers who did not know or did not heed existing legal instruments to punish rape. Researchers recorded almost no anecdotal evidence of convicted perpetrators receiving jail terms (except in interviews with legal practitioners), despite this provision existing in the Penal Code, and sentencing usually singularly obliged the payment of compensation and appeared susceptible to corruption and certain discriminatory gender norms. The head of a women’s advocacy group in Yangon explained:

If our network gets a rape case we go to the hospital to get the medical record because, if not, due to the culture and tradition, the rape case is hidden and almost impossible to prove. When we file the [rape] case, normally if the perpetrator is rich and powerful then he wins and the victim always loses at the court. We try to prevent corruption by going to court to support the victim, but if the perpetrator is clever enough he will try to persuade the family, and the family, because of lack of knowledge and pressure for money, mostly will solve [the case] through negotiation and [acceptance of] compensation like 500,000 kyat. One month ago there was a case of a juvenile rape and her family negotiated with the perpetrator and settled [with him] directly for 700,000 kyat. The ward

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276 Mon State, focus group discussion 58.
277 Yangon, focus group discussion 86.
administrator and police were also involved with this [negotiation] by encouraging the family to settle and giving the [decision-making responsibility] back to the family and the perpetrator. They helped them solve it like that so they didn’t have to.\textsuperscript{278}

A lawyer in Mon State also cited corruption among local police or medical personnel and the absence of psychosocial support and specialized services for juvenile victims of rape as barriers to women’s ability to effectively pursue a case against the perpetrator:

\begin{quote}
Sometimes the police receive a bribe and close the case, and then [women] never get the opportunity to go to court or access the local [legal] system. Men who can pay police don’t worry about raping because they know they can bribe the police. Also, in one case, a 10-year old girl was raped by a 60-year old man, and when she [went before] the judge, he asked her [to describe the details of the case] but she couldn’t say anything, she was [too] afraid. So the case was dismissed.\textsuperscript{279}
\end{quote}

According to a woman lawyer based in Mawlamyine:

\begin{quote}
It’s not fair for women in rape cases that the police, the doctor[s], and the judges are men, so when the police ask very detailed questions about the case it makes [a woman] very ashamed to say. To show a male doctor the vagina when we are supposed to keep that very private and safe – the young girls would be very shy to show. They also need to show [their] underwear or htamein for evidence of semen, otherwise the doctor won’t do the medical check or provide the medical [evidentiary] document. This medical document is very important and if the police give money to the doctor, he will write that the penis only touched outside and didn’t go inside, [and] this changes the charge and punishment for the man. So it is easy for the [perpetrator] to bribe the police or the doctor, and that will change the case completely.\textsuperscript{280}
\end{quote}

Descriptions of customary adjudication methods for rape showed that outcomes typically fell into two categories: 1) payment of compensation by the convicted (or charged) individual to the complainant (or the complainant’s family) or 2) marriage of the complainant to the perpetrator. A chairwoman of the ward MWAF office in Yangon explained the process for negotiating marriage after a rape was perpetrated:

\begin{quote}
The secretary of the district MWAF is [a] retired judge, and usually she resolves the cases. In regards to rape, she urges the boys who committed the rape to marry the girls. If the boy accepts, then the case is resolved in the office. There are about 10 [rape] cases that were [resolved] successful[ly] in their office. If the boy refuses to marry the girl, then the case is referred to the court.\textsuperscript{281}
\end{quote}

\begin{flushleft}
\textsuperscript{278} Yangon, key informant interview 75.
\textsuperscript{279} Mon State, key informant interview 43.
\textsuperscript{280} Ibid.
\textsuperscript{281} Yangon, key informant interview 81.
\end{flushleft}
As mentioned earlier, project researchers documented numerous community perceptions that MWAF members may wield considerable authority to influence their local courts, resulting in greater incentives for a perpetrator of rape to agree to marriage rather than face a judge who is predisposed to a guilty verdict. “As a member [of MWAF], I do many things related to public safety. I protect against trafficking, and help the elders and protect children against rape. I also negotiate marriage when the woman was treated bad.”

Of the two main customary legal outcomes in rape cases, women respondents expressed clear, widespread dissatisfaction with monetary compensation as restitution for rape, but their discussions of cases that were concluded through marriage involved more weighted analyses of the perceived advantages afforded to women. A woman’s marriage to her assailant was described by several respondents (representing a wide range of educational and socioeconomic backgrounds) as a compassionate and favourable option for women who had experienced an incident of rape because, they argued, within her home community she would no longer be able to lead a “normal life.” A Kachin youth group leader in Myitkyina said marriage to the perpetrator of rape was encouraged by parents and family members who believed that the woman, having “lost her value,” would not be courted by another man and could permanently lose the opportunity to marry and have children. “Parents love their daughters and want to protect them like children, even when they are adults. They want to block them from things that hurt their reputation or look bad for them.”

The director of a prominent civil society organization in Myitkyina said:

> Although in some ways this may seem cruel to marry a woman to her rapist, in the absence of other options, getting married may be the best option. She may not be able to find anyone else who will marry her. It is a solution.

According to a focus group participant near the KIO-administered area of Kachin State:

> One boy snuck into a girl’s room [and] raped her and she got pregnant, [but] he [didn’t] want to marry her. The boy’s family gave her some compensation and an apology, that was all. The woman was forced to marry an opium addict because, out of shame, the parents needed her to have a husband [because] she was pregnant. See how it would be better if she married the first man.

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282 Ibid
283 Mon State, key informant interview 50.
284 Kachin State, analysis session 18.
285 Ibid.
286 Kachin State, key informant interview 15.
287 Kachin State, focus group discussion 25.
Several women research participants across the target areas submitted that, taken alone, analysing the legal barriers to justice following incidents of rape did not adequately depict the more implicit, ingrained challenges women faced due to certain discriminatory norms, not customary or statutory laws. According to a woman lawyer in Yangon:

> For example, if a girl is raped, in fact this girl is innocent. But this is not how it is seen. In Burmese [culture] they respect virgin[ity], so for women who get raped this is very shameful. This does not come from our law but from people’s manner and tradition, from custom. The law can give justice but our cultural [practice] is unfair. Women who have experienced rape, almost all the people undervalue her. That is why women who [are] raped do not complain to the court, because they do not want people to know, and if their family knows [they] just keep in silence. This is one factor why it’s difficult for women to access justice. This is not our Myanmar law, this is Myanmar customary practice.\(^{288}\)

Women and men respondents in the four target areas cited the cultural significance and value assigned to virginity as a prevailing force behind women’s decisions not to report a rape. A lawyer in Yangon said simply, “A lot of people do not think reporting rape will do anything because [women] cannot get their virginity back.”\(^{289}\) According to the Gender Equality Network, the silence that can shroud experiences of rape and sexual assault “appears to stem from social norms around women’s sexual purity and honour, and women’s fears of the social consequences related to admitting experiences of sexual abuse.”\(^{290}\) One gender rights activist in Yangon pointed to the Myanmar-language term used colloquially for “rape” as revelatory about social perceptions of rape survivors:

> Women’s physical integrity in our culture is her sex. So when a woman is raped, we use the term *pyit si de*, which is equivalent to [the verb] “destroy.” If your shoes were left in the rain and fell apart, you could use *pyit si de*. Rape destroys her dignity, her virginity, her morality. We highly value [the] virginity of [a] girl, so if a girl is raped before marriage she becomes dirty, no longer pure; her purity is destroyed along with her morality. When she is in the community she must always lower her head because that is her moral debt. *Pyit si de* is not the official term used in court,\(^{291}\) it is the polite way to say rape among the community, but the meaning is very bitter.\(^{292}\)

The blame that may be placed on survivors of rape, instead of the perpetrators, was noted uniformly across the target areas as well as within the formal and informal legal decision-making bodies operating there. “When there is sexual violence or rape, the culture forgives the man and I think this is injustice. Always the women are the ones who are rejected. The perpetrator [must] be punished

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288 Yangon, key informant interview 60.
289 Yangon, key informant interview 84.
290 Gender Equality Network 2014, p. 3.
291 In court, the word for rape would likely be *ma dain kyint*.
292 Yangon, key informant interview 78.
for the crime he committed.” 293 During a focus group discussion with young male civil society organization members in Mawlamyine, the group asserted that there would be a reduction in rape cases if women did not wear short skirts, accompany boyfriends after dark or go out alone at night. 294 A civil society activist in Yangon described adjudicators’ tendency to investigate a woman’s personal background for its bearing on the case:

There is definitely a similarity between customary and formal legal [actors who] check [a] woman’s sexual history but not the man’s. We know that after reports [of] rape or sexual harassment, the police don’t check the man but do check the background of the woman to see if she has a reputation as a “playgirl” or fast woman. It’s the same with customary, the local decision makers do this as well. 295

Signboard titled “Prevention from Rape” posted publically by Mon State Police in Mawlamyine.

Some research participants noted that the country’s ongoing period of reform may have a dampening effect on grass-roots support for reporting sexual violence when assailants share key aspects of a community’s identity, for example, political affiliation or ethnicity. At a time when ethnic and religious entities, civil society organizations, political parties and non-state armed groups are positioning or redefining their roles in a post-dictatorship Myanmar, sensitivity to their public image and reputation was said to be particularly high. In contrast, respondents said mechanisms of reporting were more likely to be triggered when the perpetrators were military personnel or individuals from outside the given community. For example, in 2014, the rape of a young woman was allegedly perpetrated by a soldier stationed at a military base near the victim’s home in Mon State. 296 The case was quickly championed by two well-known women’s networks, a Mon political party and local ethnic leaders. 297

293 Kachin State, focus group discussion 25.
294 Mon State, focus group discussion 58.
295 Yangon, data validation session 2A.
296 Yangon, key informant interview 75.
297 Ibid.
But according to several Mon women’s rights activists in Mawlamyine, rapes perpetrated by ethnic Mon men against Mon women received less coordinated and swift responses by these same groups.\textsuperscript{298} Similar critiques were collected in Kachin State and the city of Yangon.

Reasons cited for these differing reactions and legal responses exhibited, positively, the improved climate for submitting complaints against the military or members of the political elite, but also exposed organizations’ varying degrees of unwillingness to report or publicize acts of violence committed within the ranks of their own ethnic, religious or political groups. The growing inclination and widening forum to report on military violations against civilians, including sexual violence, takes a sizable, commendable step after decades of military oppression. Several women’s rights activists, however, appealed for abuses perpetrated by civilian against civilian, or within the same ethnic or religious group, to receive equivalent condemnation and be guaranteed a prompt, resolute and organized legal response towards and throughout justice delivery.

**Sexual Harassment**

When incidents of sexual harassment were presented in focus group discussions as injustices facing women in the local community, research participants rarely attributed the problem to failings within the legal systems but rather as socially normalized behaviour in need of remedy. A Yangon-based lawyer conjectured that the reason the issue was framed in this way was likely that, in her experience, most community members did not know that sexual harassment was illegal. “We provide trainings on this for women and men, and prior to the trainings, neither [group is] aware that sexual harassment is a crime.”\textsuperscript{299} The Gender Equality Network also points out that the lack of specificity in the Penal Code dilutes its utility in harassment cases:

\begin{quote}
If the intent of these Penal Code provisions is to prevent unwanted touching or sexual harassment, whether physical, emotional, visual (through unwanted exposure to sexually explicit images) or verbal, they should identify these unlawful acts more precisely.\textsuperscript{300}
\end{quote}

Sexual harassment was referred to predominantly during research activities in urban areas (namely Yangon, Mawlamyine and Myitkyina), but researchers were not tasked with measuring its prevalence, and this report makes no assertion that it occurs more or less in rural areas. Instead, the frequency of its mention in large cities – where women typically have access to a higher number of justice mechanisms – signaled the need for additional legal aid, law enforcement and community awareness campaigns in urban sites and, ostensibly, beyond.

\textsuperscript{298} Mon State, data validation session 3A.
\textsuperscript{299} Yangon, key informant interview 84.
\textsuperscript{300} Gender Equality Network 2013, p. 10.
Respondents explained that women were deterred from submitting a case of sexual harassment to a justice mechanism, formal or informal, due to concerns about their own social ostracism or the common perception that verdicts would not favour or advantage the woman:

If I am out at night, men will follow and make comments, like offering to pay me [for sex]. Even if I report, the police will tell me to be patient. I personally reported sexual harassment four or five times while I was at university. The police [would] ask where the person is, laugh at me and tell me that I’m just being sensitive. One time when I was on the bus and physically assaulted, I shouted out what was happening, but the other people on the bus just looked at me and told me it was my fault [for] wearing a short skirt.301

Most of the accounts of sexual harassment documented by researchers involved unwanted physical touching by strangers on public buses, or sexual harassment perpetrated against domestic workers in private homes. According to a focus group participant in Tamwe Township, Yangon:

Sexual harassment happens in this area mostly to the housemaid[s]; they are abused in many different ways [including] rape. If they are abused they don’t have anywhere [to] report. Sometimes they want to [submit] a claim to the ward administrator’s office, but who [would] go with them to [make the] claim? Sometimes the neighbours [will go] or, if they are very brave, sometimes they go [by] themselves. [But] even if it is brought to the ward administrator’s office, the owner [employer] just pays [the ward administrator] and the woman is sent back to work at the house.302

Inheritance and Child Custody

Women in Chin and Kachin communities cited particular dissatisfaction with their respective customary rulings regarding the inheritance of property or assets. Despite an indication that, in recent years, some parents have begun to pass the family inheritance to women, a focus group participant in Chin State said, “In Chin customary law, the youngest male sibling inherits the property. In my family, the older [siblings] work so hard [while] the youngest one is still in high school and already is [abusing] alcohol, but he will inherit everything.”303 Another Chin woman respondent said, “From a very young age, girls are taught that everything in the house belongs to the boys.”304

Research participants described divergent customary legal practices that evolved over hundreds of years of oral traditions in Chin State. Several women noted improvements in marriage practices, particularly reductions in the cost and frequency of exacting a bride price, but said women’s legal rights to

301 Yangon, key informant interview 84.
302 Yangon, focus group discussion 86.
303 Chin State, focus group discussion 40.
304 Ibid.
inheritance and child custody remained constrained by local interpretation of Chin customary law that typically favoured men. “We still see few women who inherit family property, although some places have changed more than others. For custody, mostly children stay with mothers after divorce, but if the husband or his family want the children, there is always the threat that they can take them without question.”

In Kachin State, women described similar limitations for rights to inheritance and child custody:

In Kachin society, women can ask for custody of our children but the culture says that all sons belong to their fathers [because of] the male bloodline. This is discriminatory. Women also do not give their family name to their children, so automatically the husband has power over his wife, and men have power over women.

A focus group participant in a neighbouring community concluded:

Our problems are decided by a traditional group that is [made up of] respected leaders who might also be friends or family members of our husbands or the man who hurt us. This means that they decide in favour of men, and even if there is a punishment, it is very minor. Usually there is no other way to complain, or way to pursue or appeal the case once the decision is made. There are women’s groups we can talk to, but they cannot change the ruling.

Justice Concepts and Norms

Researchers began each focus group discussion and many key informant interviews by asking women participants what justice meant to them and what access to justice would look like in their lives. Using this conceptual examination as a jumping off point, respondents and researchers could better understand each other, the purpose of the activities and the relevant terminology they would use together throughout the discussions. But these collective investigations also illuminated how the very notion of “justice” – what it is for, who defines its meaning and how it is practically applied – had significant influence over women’s legal choices and remedies.

Women’s Definitions of Justice

Activities exploring women’s definitions of justice elicited responses that fell mostly into three categories: justice as 1) a state of unity or harmony within a community, 2) freedom from corruption and discrimination based on ethnicity, sex, power or economic well-being, or 3) a social construct defined or controlled

305 Chin State, focus group discussion 41.
306 Ibid.
307 Kachin State, key informant interview 16.
308 Kachin State, focus group discussion 25.
by authorities. Women felt that their own justice needs had to be subverted to
the cause of communal harmony, saw schisms between different women’s legal
rights due to ethnicity and levels of wealth or education, and expressed opinions
about persistent corruption within the varying legal systems.

The first grouping of definitions was widely documented in the target areas and
emphasized the value placed on communal harmony over an individual’s legal
pursuit or attainment of justice. Several respondents explained how justice was
achieved through mutual understanding, negotiation and adherence to shared
social norms, while very few described justice as an individualistic right or benefit
derived from personal experience. As stated by a focus group participant in Chin
State, “When the majority does not agree, that is not justice.”

Respondents in Mon State focus group discussions offered similar interpretations
revolving around harmony and negotiation between parties. A youth leader in
Mon State said, “When you talk to others and you think of them and not only
of yourself, when you plan something and think of both sides, this is justice.”

One woman in Thanbyuzayat Township defined justice as “[…] unity together. If
we make a decision in the village, all people should be in agreement, and after
we ask the villagers, if they agree, we should take a decision and this is called
justice.” Another woman respondent said:

Both sides should work together and cooperate and encourage each other; justice is negotiation and helping each other. If we always try to understand each other then we won’t have problems and will have justice. If you think on one side you will not have justice.

Conceptual notions of justice shared with researchers often demonstrated a
perceived or preferred affiliation with justice bodies belonging to the individual’s
identified group, usually defined by ethnicity, religion, geography, tradition or
history, temporary environments (e.g., within an IDP camp or on a migratory
route) or socio-economic status. A focus group participant in Mon State said,
“For us, justice is based on our Mon and Buddhist beliefs so we use our traditional
respected elders to solve problems.” But throughout the target areas, and
irrespective of the chosen mechanism for justice delivery, the value of justice
was almost uniformly described as ultimately protecting and promoting the
harmony of that particular social unit. A Yangon-based gender rights activist
addressed this phenomenon, stating:

Our innate understanding [in Myanmar] is that we have to protect our
community because we gain our identity through our community. We
always have to think how our personal identity comes from our group
identity. The group identity is on top. If you put aside the group identity
or you seek your own justice, you will be punished, you will be excluded.

309 Chin State, focus group discussion 40.
310 Mon State, focus group discussion 56.
311 Mon State, focus group discussion 51.
312 Mon State, focus group discussion 52.
313 Mon State, focus group discussion 53.
you will face social punishment. [People would say,] “You never care to think about your community. You are selfish.” In our ethnic communities, the leaders – sometimes religious or traditional leaders like those who are responsible to maintain the customary practices – for them they usually interpret justice as justice related to sustainability and harmony within the community instead of exploring much on the individual definition of justice.\textsuperscript{314}

Several research participants explained how the task of preserving communal peace fell heavily on women because they were more scrutinized than men for perceived transgressions, more regularly blamed for problems occurring within the family, or more likely to be asked to keep silent about cases of wrongdoing or abuse. A civil servant in Chin State said:

\begin{quote}
I’m not sure what justice is or what justice is not, but for Chin women, we don’t try to stand up and get our rights, we accept things the way they are and we don’t struggle. That is the result of embedded discrimination in the culture, in access to education and the right to inheritance. We women are expected to just think for the family interests.\textsuperscript{315}
\end{quote}

Project discussions also outlined “justice” as a state of freedom from corrupt and discriminatory practices that could be achieved when inequities in wealth and power ceased to impinge upon legal outcomes and access to services. A Yangon-based respondent observed that “justice” occurred when authorities “decide [cases] based on the fact or the truth, not background or sex or who the family is. When some [complainants] give up and [drop the case,] we should be brave to still ask for justice.”\textsuperscript{316} A focus group participant in Chin State said:

\begin{quote}
Justice means when the court makes a decision based on evidence and truth. When the court makes a fair decision it’s not based on ethnicity or whether people have money or not: Poor people should get a fair judgement, too. In the past, we saw so many judges who took money.\textsuperscript{317}
\end{quote}

Legal practitioners and some community respondents in each target area also described justice as a construct of those in power, namely political, religious, and ethnic leaders who developed justice norms and systems as a means for control or reinforcing authority. A prominent civil society leader in Yangon said:

\begin{quote}
In our daily lives, we experience how justice is defined by [a] corrupted military system, so we never try to seek justice because we cannot trust the definition of justice. So accessing justice is another heavily laden issue. In our country’s context we’ve been through repressive military rule, we’ve been through the supervision of the religious leaders, and always our justice in the past was defined, interpreted by those people.
\end{quote}

\textsuperscript{314} Yangon, key informant interview 78.  
\textsuperscript{315} Chin State, focus group discussion 37.  
\textsuperscript{316} Yangon, key informant interview 68.  
\textsuperscript{317} Chin State, focus group discussion 39.
In Myanmar the term ‘justice’ is usually interpreted by those who have power, who make laws. Since we’ve lived through a very corrupted society, justice has been defined by corrupt authorities.318

In Myitkyina, Kachin State, an ethnic leader said simply, “When we talk about justice, first we must ask, ‘Justice for whom, and defined by whom?’ Because it is not the same for all.”319

Religion

The population of Myanmar is predominantly Buddhist, with deeply devout adherents that include most of the Bamar ethnic majority along with several ethnic minority groups such as the Mon and Shan peoples. Hinduism, Islam, and Christianity are also practised in significant numbers, with the latter being largely found among the Kachin and Chin groups and some Kayin. Although there is marked religious nationalism and historical identification with Buddhism in Myanmar, the 2008 Constitution does not explicitly name it as the national religion, instead distinguishing Buddhism’s “special position”320 as the majority faith while recognizing the practice of other religions321 in the country.

It is beyond the scope or intent of this project to analyse how barriers to women’s access to justice in Myanmar may be shaped, mitigated or strengthened by the country’s resident religions, but during research activities, the influence religion had on justice-seeking behaviours and concepts was clear. Researchers regularly encountered the subject of faith and religious principles during project discussions around law and justice, and the following narratives underscored certain perceived effects of religion on women’s access to justice as reported by community members, religious leaders and civil society activists. Analysis is limited to information shared by Buddhist and Christian research participants because, although 23.7 per cent of respondents in the Yangon target communities were Muslim, not enough data was collected to formulate practically significant conclusions about women’s access to justice and Islam in Myanmar.

Buddhist and Christian women reported that their access to justice could be negatively impacted by religion primarily when religious values were imposed as substitutes for legal rights to redress, when religious institutions displaced other available legal channels without providing satisfactory dispute resolution, and when religious leaders advised women against further reporting a legal issue, particularly of sexual or domestic violence. Respondents described how the interpretation and normative application of certain religious teachings could impact women’s freedom to claim their legal rights, particularly Buddhist atonement for past sins and Christian emphasis on patience and forgiveness:

318 Yangon, key informant interview 78.
319 Kachin State, key informant interview 15.
320 2008 Constitution, Section 361.
321 2008 Constitution, Section 362.
[Justice] is very much affected by [Christian] religious teachings of patience and forgiveness. It is very hard: Mostly men can do bad things and our community can accept that as normal, it is by nature. But if done by women then our community does not accept. If [a] man does something wrong, women will say to his wife, “Patience, be patient, pray for him.” 322

One woman legal advocate described the story of a young Christian woman who had sought counsel with the pastor of her Baptist church in Yangon after her boyfriend raped her. “[The pastor] told her to pray to God, and that forgiveness is a kind of gift she must give.” 323 She left the country soon after, and the lawyer said she hoped the young woman had found “justice through peace.” 324 According to a Chin women’s activist in Kalaymyo, Sagaing Region:

We are Christian and we don’t want to create problems and we don’t want to go to police because it is in our blood that we are afraid of any government officers. In the Bible it says not to resolve problems in front of human beings, [but to] bring the problems to God. So many Chins believe that solving problems with God is better. We grow up between a fear of government officials and religious influence. 325

Christian and Buddhist research respondents also described how, in some cases, religious doctrine could impel women to accept the condition of abuse or hardship, notwithstanding the existence of dispute resolution mechanisms in their communities, because it was seen as moral punishment for past misdeeds. A focus group participant in Mon State explained, “Because we are Buddhists we say that if we face bad things, then in our previous life we must have done bad things, so we deserve this happening now.” 326 A woman lawyer in Yangon said:

Our Burmese women are very humble and [give] respect to our husbands, so when husband beats wife, the wife accepts that this is from the sins of [her] past life, so [she] must wash all sin from the past in this present. 327

Christian research participants in Kachin State said that both the formal and customary legal mechanisms were too public and time consuming to use, “so it’s better to trust in God.” 328 After witnessing corruption among local administrative authorities, one woman stated, “I just put everything in God, that He will solve for me. I [do] not report problems anymore, no matter what happens.” 329 Reflecting on the barriers women faced within these traditional legal mechanisms, a woman research respondent concluded:

322 Kachin State, key informant interview 9.
323 Yangon, key informant interview 84.
324 Ibid.
325 Chin State, key informant interview 30.
326 Mon State, focus group discussion 52.
327 Yangon, key informant interview 60.
328 Kachin State, key informant interview 3.
329 Kachin State, focus group discussion 23.
In Chin society, mostly we resolve problems through the religious way of forgiving or [with direct] negotiation between the parties. We don't use the court system much, and many women don't approach the traditional councils unless the family [asks them to].

A focus group participant in Chin State assessed that, in her community, “there are no [special] services for women's legal issues, mostly it is moral encouragement and prayer support,” and a reverend in a rural area of Kachin State explained:

For women's cases [in the community] we go first to the Christian church, and after if we are not satisfied, maybe we go to [the local] administration office. At church, we solve these problems through scriptures and prayer. Really, we can’t solve much. We just tell the woman to go and pray.

To combat possible negative consequences to women’s justice-seeking in a deeply religious society, a women’s group member in Falam, Chin State, said she believed campaigns to increase women’s participation in key positions in religious administration bodies should be emphasized just as much as those targeting other governance institutions:

In civil service, [women] can face obvious discrimination but there are more barriers in the religious institutions. The smaller [religious] denominations hardly have women working, just maybe the secretary job. In our society, the men do not recognize the strong side of the women, that we are very good negotiators and that when we deal with a case, we deal with every aspect and angle of the case. The church and the society do not recognize this strength. Look at Chin politics: We don't have women to look up to. Look at the church: We don't have outstanding women to look up to. They are all men who don’t know or don't care about gender issues. We give [men] so much easy access to powerful positions whereas women have to come up with a long list of strategies.

Compelling narratives were also presented about religious institutions’ potential to improve and promote women’s access to justice. Research participants in Kachin State and Yangon suggested that gender and legal awareness training for church leaders and the inclusion of women decision makers on church committees would significantly strengthen legal reporting channels for Christian women, particularly because many Christian women reported speaking first to a pastor or reverend about personal hardship or a legal dilemma they faced. A civil society leader in Yangon described how monks, too, could champion gender equality in access to justice by applying fundamental Buddhist principles:

330 Chin State, focus group discussion 39.
331 Chin State, focus group discussion 42.
332 Kachin State, key informant interview 5.
333 Chin State, focus group discussion 40.
True Buddhism says all people [are made of] flesh, no female, no male. This flesh will decay, it is only temporary [...] so we shouldn't attach to flesh. If we discriminate based on sex, that is attachment to the temporary. If you discriminate based on sex, that is contrary to Lord Buddha’s teachings.334

Patterns of Reporting a Legal Issue

The patterns of communication detailed in this section likely constitute common knowledge for many members of Myanmar society, but researchers observed that the ways in which women reported a legal issue revealed key entry points for access to justice initiatives at the local level. Women described being guided, dissuaded, supported or overwhelmed by the various actors involved as a legal complaint. The complexity of the reporting process was frequently criticized for contributing to women’s decisions not to see cases through to completion. Most importantly, each link in this chain of communication represented a potential opportunity or obstacle for women pursuing their rights to legal redress.

As mentioned in the introduction, women research respondents described facing a slate of legal issues including those related to land grabs, inheritance rights, and drug trading or abuse, and for all of these the pattern of exchanges that preceded legal pursuit could look the same. But due to certain discriminatory norms and failings in women’s protection within customary and state legal mechanisms, issues involving physical or sexual abuse appeared to be the most severely restrained along the continuum of communication.

Reporting Channels

In every target research area, and in both urban and rural settings, participants mapped out remarkably similar patterns of the way women initiated communication and proceeded to report a legal issue. Mapping activities illustrated how women most often confided first in friends, or parents or close relatives, who then endorsed or discouraged further legal pursuit. According to a lawyer in Yangon, “The practice of Bamar women is not to go to the ward administrator voluntarily; [she] will talk first to a close friend, great aunt or uncle.”335

If the woman and her confidante(s) chose to take action beyond this first tier of discussion and decision-making, the next recipient of the case was likely to be an esteemed local person – the yat mi yat pa – or a traditional council of elders, religious leader, community-based organization, local branch of MWAF, the relevant judicial body of a non-state armed group, village or ward administrator, or, where relevant, IDP camp managers. Researchers documented how each of these individuals and adjudication bodies had negotiated the settlement of rape cases, typically through the payment of compensation.

334 Yangon, key informant interview 78.
335 Yangon, key informant interview 60.
In the event that no satisfaction was found using these mechanisms, women could submit the case to township authorities. Research respondents consistently described this final avenue for legal pursuit only as women’s last resort, and one that was rarely selected for reasons detailed below. No woman in any focus group had resolved any legal violation with authorities other than those listed above, except in the few interviews for which women were approached because they had a case adjudicated in court. A Yangon-based women’s rights activist said:

> The ward [administration] office is the highest complaint centre [women use]. Otherwise they will solve their problem[s] with a very close friend or religious leader. For example, a girl was sexually abused and she told [the] church leader. They thought it was shameful. In a few days I met with her and encouraged her to complain, but she responded, “I won’t because we have [a] very good relationship [with the church] and if I complain I will only be shamed.” She thought this [silence] was the best way to solve the problem.336

This first stage of deliberation that women shared with friends or family could inhibit legal processes, but it also demonstrated women’s agency in decisions about their legal options and approaches. The Gender Equality Network’s 2014 briefing paper on sexual violence in Myanmar characterized personal confidantes as one of several tools that women actively employed as part of their preferred “help-seeking behaviours.”337

Over half of the women interviewed reported that they had discussed their problems with friends, relatives or other community members. In many cases, these individuals provided emotional or practical support to the women – from clothing, food and shelter, and protection to being

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336 Yangon, key informant interview 61.
337 Gender Equality Network 2014, p. 5.
available to talk about the abuse. A few respondents were able to file cases against their husbands, always with the help of a legal counseling service and often at the advice of family and friends.\(^{338}\)

Consequently, the recurring pattern of discussions and communal planning that was the precursor to legal action underscored the significance, both positively and prohibitively, of friends, families and local actors in relation to a woman’s decision to submit a case for adjudication. It also revealed the value placed on personal familiarity with a legal channel that was chosen for adjudication. Women and families frequently reported that the selection of a dispute resolution mechanism depended almost entirely on whether or not they had close, trusted relationships with the adjudicators. According to a Yangon-based member of Parliament:

\begin{quote}
Bamar [people] don’t care about the [specific] authority, they care about the personal relationship and only approach someone who has a good relationship with them. If the ward leader is someone they don’t get along well with, they don’t go. Relationship and reputation is very important, otherwise they will not listen or trust the decision. But people don’t want to go to [the] police. Even if the police officer is their friend, they don’t want to go because they think they are corrupt. Many of us believe we cannot rely on [the police].\(^{339}\)
\end{quote}

Women’s inclination to discuss legal problems with an established confidante or trusted adviser, before approaching a legal mechanism, was identified as a key area for informing women’s access to justice outreach at the community level. The head of a women’s peace network in Yangon said:

\begin{quote}
There are many women’s groups rising in Myanmar who want to work for rural women, but most of them are staying in [Yangon]. They don’t go to ethnic areas or rural areas [and] they need to be […] not so focused on [Yangon]. If women in the rural areas don’t trust you, then they will not work with you or talk to you.\(^{340}\)
\end{quote}

Finally, women reported that when the chain of communication related to submitting a legal case included multiple actors and procedures that could be convoluted, time-consuming, indiscreet or even re-traumatizing for the victim, the result was a general resistance to reporting or the early termination of a case before completion. The founder of a women’s rights advocacy group in Yangon explained how the complexity of the reporting chain could deter women from pursuing a legal case to its conclusion due to the absence of sensitive legal services and the harsh responses from the community.\(^{341}\) The activist described a role-play conducted in Myanmar’s Bago Region, north of Yangon, on International Women’s Day during which 350 local girls acted out their perception of a woman’s typical experience reporting a rape:

\(^{338}\) Ibid.
\(^{339}\) Yangon, key informant interview 70.
\(^{340}\) Yangon, key informant interview 75.
\(^{341}\) Yangon, key informant interview 73.
[According to the girls’ role-play,) when the victim informs her mother, the mother scolds her and then asks the religious leader, the monk, for advice. He doesn’t know [how to manage the case] so he passes it to the ward administrator, but he doesn’t know what to do so he passes to the local MWAF [members] who blame the victim but suggest she go to the doctor in her community. He then sends the girl to a township doctor. That doctor tells her to get a lawyer, who asks the family if they can afford the process and finally, if they can afford it, she gets to court. But the judge [delays the case and] tells her to come next month because [her family] didn’t give a bribe to [expedite] the hearing. You can see how many times she has to repeat her story, again and again, and that the community moral support through that process is lacking. Who [would] want to go through this?342

Customary Law Preferences and Criticisms

Over 90 per cent of women research participants reported having never chosen to engage with any instruments of the formal legal system (e.g., police or township courts).343 Some described local police intervening in a case without invitation, particularly in public situations like traffic accidents, motorbike theft or arguments in public spaces, although respondents claimed that a formal investigation or charge could be avoided by paying a bribe. Similarly, a recent study by Asia Justice and Rights reported that of their 29 women participants, all of whom had legal grievances, only three chose to seek justice in the courts. Of those, “Two were unsuccessful, and the outcome of the third case was dissatisfying for the family. In all three cases, the process led to further harassment and problems for the victims or their families.”344

As noted above, several women and men in Mon, Kachin and Chin research areas reported viewing local village administrators as part of their customary, not formal, governance system: a community-oriented leader who utilized “culture law” and often made decisions in conjunction with traditional elders or other respected individuals in the village. “[T]he importance of the [village tract administrator/village administrator] exceeds the functions outlined by the state due to expectations placed on him by fellow villagers that he also acts as a social leader in the village tract/village.”345

The practical obstacles that appeared to restrict widespread usage of the formal legal system are covered in greater detail in the following section, but in addition to the prohibitive conditions commonly associated with the police and courts, respondents described how customary law “provides restitution that formal law does not”346 and was more “relevant”347 to their culture or traditions:

342 Ibid.
343 Women interviewed for this report who had experiences with the formal legal system were primarily involved in cases of rape, military violations or land disputes, or were activists formerly arrested under the SLORC or SPDC.
345 MDR and Kempel 2012, p. 20.
346 Mon State, data validation session 3A.
347 Yangon, focus group discussion 86.
We prefer customary law more than the country law because [...] we can't speak out and [we] worry about not being engaged in the [formal legal] process, and the country law might differ from our village culture. Even from village to village, we might have different laws because they represent the culture of each place.\textsuperscript{348}

Similar to the concepts that surround justice described above, many respondents viewed “law” – its origin, authority and application – as being inextricably tied to their communal identity. For that reason, customary law was acknowledged to be the most appropriate legal expression of shared values and traditions:

Using customary law means the villagers are united and negotiations happen directly. Therefore [the villagers] do not become enemies. If you go to the police station then it’s like you two are not friends but enemies. In customary [legal negotiation] maybe I have to pay 10,000 or 100,000 [kyats] as compensation and this [money is] spent on the community.\textsuperscript{349} But with the Government the money you [pay] goes to police corruption.\textsuperscript{350}

One township judge in Chin State explained the infrequency of cases submitted to his court by women:

It’s been more than one year and seven months that I’ve been stationed [here] and no women have brought a case to us. There was one complaint from a 16-year-old girl and her mother who reported a rape case, but the next day they came back and withdrew the case. As a judge I wanted to help the girl, but since they withdrew the charge there was nothing I could do. Here [people] don’t use statute law; the influence of customary law is very strong. Although the government law says [it provides] protection for women, in reality it’s very weak. When a rape case happens, [the victim] thinks if people know she has been raped then she will be stigmatized and rejected. So they go silent most of the time or resolve within the Chin customary law. For many of the cases, [women] don’t even know that there are state laws that would protect them or that apply.\textsuperscript{351}

Although the vast majority of women research participants preferred their respective customary legal system for its familiarity, proximity, and relevance, a number of grievances with these mechanisms and their adjudication methods were reported. Notably, several women said that informal legal mechanisms were plagued by the same weaknesses as their formal counterparts: corruption, discrimination against women and favouritism. Legal experts, civil society

\begin{itemize}
\item \textsuperscript{348} Mon State, focus group discussion 55.
\item \textsuperscript{349} This assertion references certain customary practices that require the convicted individual to offer some social good, such as contributing a specified quantity of gravel to repair a local road or donating money to the community development committee.
\item \textsuperscript{350} Mon State, focus group discussion 57.
\item \textsuperscript{351} Chin State, key informant interview 31.
\end{itemize}
activists and women community members described deep dissatisfaction with the absence of women decision-makers among traditional adjudication councils, cultural gender bias that distorted justice delivery, and an over-reliance on monetary compensation as the primary legal remedy in customary rulings (especially when victims may not have been seeking payment):

Let’s say I was beaten by my husband and I will tell my uncle and my brother, and my brother and other uncles will ask traditional elders [to get involved] and they will go to my husband’s family and they will talk, they will warn my husband, that’s all. That is happening in our daily life in my family but it is failing to solve women’s problems. It is not enough.352

Women throughout the research areas repeatedly pointed to the severe limitation of justice delivery within customary norms that meant even if a woman “won” her case, she could be looked down upon, discriminated against, or shunned. A lawyer and legal adviser to an ethnic Mon political party explained that, for rape and sexual harassment cases:

Even when a woman is compensated the community still looks down on her, men don’t want to marry her, the community gossips about her. Even if she does get married, that man can say, “You already had a problem,” and then can treat her badly. So [receiving] small compensation doesn’t mean anything because this problem will affect her for her entire life.353

Several women and a few men respondents also objected to the implicit message they said was conveyed when customary sentencing obliged financial compensation for victims of rape or abuse. Focus group participants said that men who could afford to pay compensation had no incentive to stop abusive behaviour, and that cash payment for violations contributed to negative perceptions of women as commodities with a price to be negotiated and paid. One woman in Kachin State said, “This compensation comes from our history, when [men] would buy women like animals. We need to punish [men] so that they do not dare to [commit the violation] again, so that they see it as a crime.”354 One young male participant in a focus group discussion in Mon State agreed that certain customary practices seemed to equate women with commodities:

If the boy wants [to marry] some girl, [he] just gives money to the girl’s family. He goes directly to the mother and asks how much to marry the daughter. They negotiate a price and decide how we’ll celebrate the wedding: This seems like they are selling the girl. It is the same when the man does something wrong. He just pays money and is not punished, why wouldn’t he do it again? We really don’t like this and need to change our community mindset.355

352 Kachin State, key informant interview 9.
353 Mon State, focus group discussion 43.
354 Kachin State, key informant interview 9.
355 Mon State, focus group discussion 58.
Research participants who expressed dissatisfaction with certain negative customary practices and legal outcomes suggested that legal awareness consultations – with ethnic or traditional leaders, religious committees and community members – would provide the first step towards balancing certain discriminatory traditional norms with protections that are legally assured by national legislation and international law that Myanmar is bound to uphold.

PRACTICAL BARRIERS TO ACCESSING THE FORMAL SYSTEM

In every target research area, women (and men) described their hesitancy or refusal to file a case with police or the courts due to extensive time delays, prohibitive costs, lack of affordable and available legal representation, language barriers for non-Myanmar speakers, and long-held fears of corruption and partiality among governmental authorities and institutions:

> Courts are very expensive: Even if the judge doesn't request a bribe, [the woman] has to leave her job and go to court everyday, [and when there is] no court in her village she has to travel to the city. Women don't [travel] alone so her family also must accompany her, and they all will need food and accommodation. The whole process makes people choose customary [mechanisms].

In interviews, lawyers in Myitkyina, Mawlamyine and Yangon revealed that they frequently advised potential clients to utilize customary adjudicators instead of submitting cases through formal legal channels to avoid these same adverse side effects. An ethnic Bamar court clerk in Myitkyina said:

> If we finish our case at the local level it is good because once you [get to the] court it takes so long to finish. Here there is a drug case that happened [more than 10 years ago] that [the individual] took to court, but it's not resolved, even now.

Women in particular reported dodging voluntary contact with formal legal mechanisms due to the inadequacy (or absence) of women’s protection laws, gender bias among police, lawyers and judges, and the social ostracism that potentially accompanied women’s engagement with these authorities. When asked if she saw any special considerations in the courtroom for minors who had experienced sexual abuse or rape, a Yangon-based lawyer said, “Maybe the judge instructs [someone] to close the door [while] the victim has to testify in the courtroom. Usually they testify in front of many other people waiting for other trials, even minors.”

356 Yangon, key informant interview 73.
357 Kachin State, key informant interview 4.
358 Yangon, key informant interview 72.
Lack of Trust

During decades of military rule in Myanmar, the law was “conceived of not as a protection of rights, but as a means of control.” 359 Courts were used to conduct proceedings “administratively”360 and enforce “policy rather than law.”361 Since the transition to military-backed civilian rule in 2011, legal practitioners have reported a decline in direct government interference in the performance of duties362 but there is still a perception that the judiciary is too connected to the executive branch.363

At the same time, other systemic problems have become more apparent, including lack of technical capacity, limited funding, and poorly planned and implemented policies.364 Corruption is particularly pervasive – the International Commission of Jurists (ICJ) described it as “underlying and affecting every aspect of a lawyer’s career, and is thus never absent from lawyers’ (and clients’) calculations.”365 Unsurprisingly, the World Justice Project ranked Myanmar 89th out of 99 countries assessed on its 2014 Rule of Law Index.366 Among average citizens, there is a widespread sense that the judicial process is “expensive and daunting,”367 and research conducted for this report produced similar findings. A focus group participant in Mon State asserted, “Even if you are wrong [guilty], you can bribe the police or the judge and then you are right.”368 A prominent gender rights activist in Yangon said:

Not only women, but most people in our country don’t like to go to court because they don’t understand the procedures and [they see the] bad reputation of the police and [formal] legal system. If possible, people don’t want contact with this system. As ordinary citizens it’s very complicated to understand how legal systems work. If we want to complain [to] somebody, we don’t know where to start and all the procedures are very complicated: It costs a lot of money, and [there are] big issues of corruption, and before people go [to formally submit a case] many people will tell you, “Oh don’t go, [it’s] too expensive, just solve [the case] in the local way with negotiation and compensation.” Not only women, but most people prefer their cultural or traditional ways of resolving problems.369

359 Steinberg 2001. For additional analysis of how rule of law rhetoric has been conflated with “rule by law” as a way to support the legality of successive regimes in Myanmar, see Cheesman 2009/2010.
360 Asian Legal Resource Center 2010.
361 Ibid.
363 IBAHRI 2012, p. 29.
365 Ibid., p. 16.
367 IBAHRI 2012, p. 29.
368 Mon State, focus group discussion 51.
369 Yangon, key informant interview 69.
According to a Yangon-based lawyer, women’s distrust of the formal justice system is driven by experiences, stories and rumours of women’s mistreatment by each of the actors involved in the legal process. She gave examples of lawyers who charged their clients additional fees to write the final argument in a case, police officers who warned women defendants that offering a defence would provoke tougher sentencing, and judges who admonished women publicly in the courtroom for “bringing shame” on themselves. A former judge in Yangon explained that women arrested and charged as sex workers were unlikely to defend themselves to judges who made determinations based on a woman’s “general reputation” and who interpreted an arrest as tantamount to evidence of guilt. “Our Government wants to suppress prostitution, so the police arrest [women and] most of the judges are not there to give [an] acquittal,” During a data validation session in Yangon, a political rights activist said:

In ethnic areas, most people are afraid of going to court and [the] police station because they’re afraid of being shouted at. Even government employees feel afraid to go there for fear of this. The worst people are the clerks in the court because they are the brokers between the judge and people. Whenever the clerk smiles, you know that money must be passing hands.

Another lawyer in Yangon echoed similar observations of particularly brazen practices by law clerks who charged lawyers (and consequently, their clients) fees that were many times greater than the official price for case file copies or to attain certified case stamps for appeals:

The official price [for a case file copy] is dependent on the number of pages but should be about two or three kyat per page, so even a big case file should only be around 300 kyat. But I usually have to pay [the clerk] around 10,000 kyat [for the copy]. This is a common experience to pay this bribe and it can happen during the case as well as at the end.

Political and women’s rights activists in Yangon and Myitkyina also expressed concerns about the continuing incidence of politically motivated arrests, particularly under the Law on Peaceful Assembly and Peaceful Procession, which requires individuals to obtain official permissions before holding public demonstrations. Although the Peaceful Assembly Law was amended in June 2014, women interviewed for this report described the way in which protestors continued to be arrested, and in some cases, subsequently granted amnesty, as suggestive of the Government’s misuse of its laws and authority:

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370 Yangon, key informant interview 84.
371 Yangon, key informant interview 80.
372 Ibid.
373 Yangon, data validation session 2A.
374 Yangon, key informant interview 72.
375 Human Rights Watch 2015.
I was arrested under Section 18 [of the Peaceful Assembly] Law and sentenced to a month in jail. I only served 20 days because I received a presidential pardon: I was given amnesty. This happens a lot – people are convicted but then don’t [serve] the full time, so why do they arrest? [The Government] doesn’t announce when they arrest the political prisoners, but they announce – they publicly declare – the amnesty and get credit from the international community. It shows their power, that they can arrest you any time and free you any time, and it shows that the law is not on your side [but] in their hands.376

Lawyers in Yangon also reported that the prevalence of convicted individuals receiving amnesty was increasing their clients’ willingness to plead guilty to a charge in the hopes of expediting the trial proceedings and avoiding the difficulties women associated with detention, transport and courtroom conditions. “They just want a verdict and then they hope for amnesty. Especially for women [charged with] prostitution or drug [offences], most confess just to get it over with and avoid the courtroom.”377

Legal practitioners and women convicted under the Peaceful Assembly Law described some of these conditions observed in courtrooms, detention facilities, jail cells and police transport vehicles as particularly disconcerting for women’s safety and that amplified women’s distrust of the formal legal system:

The holding area in the courtroom is very dirty and transportation [from detention centres to court] is crowded and sometimes people have to bribe police to get a space on the truck. The truck is better now, it has windows that close and air con, but actually they don’t turn on the air con. Women in those cars are still often abused by men, verbally and physically.378

Generally, lawyers commented on favourable improvements to the courtroom environment in recent years, including plastic laminate over cement floors where people sit and separate toilets for women. But practitioners said these advancements were offset by their women clients’ continued reports of inappropriate touching by police during transportation between detention centres and courts, or uncomfortable hours spent pressed against male strangers on small benches outside the courtroom while awaiting trial. The most prevalent complaint collected by researchers was the continued incidence of female prisoners handcuffed by police in public despite its legal prohibition in Myanmar.379 A lawyer in Yangon said she had seen up to “three women handcuffed together in public,”380 and a civil society member arrested on peaceful demonstration charges stated:

376 Yangon, key informant interview 75.
377 Yangon, key informant interview 72.
378 Yangon, key informant interview 73.
379 India Act 9, 1894, Section 46(12).
380 Yangon, key informant interview 72.
[By law] women shouldn’t be handcuffed publicly, but I’ve seen many women brought to court in handcuffs. When [I saw the police] arrest women activists it was really violent and degrading. Also because the policemen and judges – the staff working at the police stations or courts – are mostly men, it is not comfortable for women.  

In addition to distrust of the formal laws and legal system specifically, several respondents stated that human rights violations committed since the democratic transition began undermined trust of governmental institutions.

The first period a few years ago, we were hoping that [the Government was] really changing and committed, but starting in 2012 with Letpaduang, with communal violence, with only ceasefire but not peace process [with all ethnic armed groups], we still have to question their commitment.

Prohibitive Costs, Time Delays and Language Barriers

Research participants expressed varying degrees of recognition that due process procedures were improving, bribery demands were declining, and political intervention in the judiciary had decreased. However, respondents who made these observations were typically legal practitioners or civil society members who worked in or alongside formal legal institutions and therefore had more intimate knowledge of planned and implemented changes. Among community members, interviews revealed little to no acknowledgement that the formal legal system was becoming fairer and less costly or time consuming. A practising lawyer in Myitkyina explained:

[People’s] situation is this: “Justice delayed is justice denied.” We have a lot of cases of injustice here and they are very delayed [in the court], so next month, two years, four years – [complainants or defendants] see that they have to spend a lot of money and a lot of time [to resolve a case in the court] and that is the meaning of “justice delayed is justice denied.” We have a court, we are processing [cases], but all of these delays are not fair for the people.

A women’s rights activist in Yangon suggested that, during politically sensitive cases, chronic delays over time also served to discourage media attention. “If there are many court appointments and nothing happens [because the judge sets] another date again and again, it reduces interest until the media moves on [from the story] completely.” According to a ward administrator in Yangon’s largely industrial Hlaingtharya Township:

381 Yangon, key informant interview 69.
382 The management and proposed expansion of the Letpaduang copper mine in Myanmar’s Sagaing Region continues to spark large protests in cities around the country.
383 Yangon, key informant interview 74.
384 Kachin State, key informant interview 11.
385 Yangon, key informant interview 69.
Here the standard [attitude] is that women are afraid to go to the court and police station because they cannot give time for this. Women [here] almost all work in factories and when they are absent [from] work, their employer lowers their pay [or] some get fired. Instead they accept the [local] dispute settlement, even if they feel [it’s] unfair.\footnote{386}

A church volunteer in the same township said simply, “If the case is big, then we have to spend more money and if you can pay a lot, you will win no matter if you’re right or wrong.”\footnote{387} In Yangon, a woman activist charged with violating Section 18 of the Peaceful Assembly Law illustrated the prohibitive effect of time delays on women in cases of abuse:

\begin{quote}
[During the trial,] some police officer or witness could not come [to testify] so although today is the court appointment, they postpone but it’s not the next day, it’s two weeks later. We go weekly to the court and then waste our time. When we are waiting at the court, now the judge has [a] meeting today so we wait until the judge arrives and we never know when we will finish. Let’s think about a woman who faced violence: If she has to go several times to the court this way she will just drop the case because this is so traumatic for her. At the court there are more men than women, there is no place to sit, no toilet, you just stand and wait. For me, when I first saw our court condition I was so shocked. The courts look so bad! Some courts are just small apartments with no place to sit or stand. You have to spend the whole day there to wait for [the] judge to call you.\footnote{388}
\end{quote}

Extensive delays were reported not only in association with the government judicial system, but also with other relevant avenues for legal reporting including political parties, state-sponsored women’s organizations and liaison offices belonging to ethnic armed groups. According to the founder of a women’s rights network in Yangon, her network’s members previously reported cases of rape, juvenile rape, and domestic worker exploitation to their local NLD party office, but now prefer to deal directly with community-based organizations perceived to be less hierarchical and more fast-acting:

\begin{quote}
 It takes a long time [to submit a case] with [the NLD’s] procedures and principles. First, they report to the township office that needs to report to the division level, and then they have to report to the central level, so [it goes] step by step, and after the decision comes from the central level then they can solve. The township level cannot make decisions so people don’t want to wait.\footnote{389}
\end{quote}

\footnotetext{386}{Yangon, key informant interview 62.}
\footnotetext{387}{Yangon, key informant interview 67.}
\footnotetext{388}{Yangon, key informant interview 69.}
\footnotetext{389}{Yangon, key informant interview 75.}
Respondents also described two types of language barriers that reduced their likelihood to approach the formal legal system: 1) exclusive usage of the Myanmar (Burmese) language in government legal institutions that prevented monolingual speakers of other ethnic languages (or less-than-fluent Burmese speakers) from directly engaging with legal staff, and 2) minimal awareness of legal terminology, technical processes and procedural requirements that affected the handling and outcome of court cases. According to a practising lawyer in Yangon:

> When lawyers ask [questions of] the victim, she often cannot understand because of the legal terms. This is [due to the] poor ethics of the lawyer. In my experience, when people appear before the court they [are] shocked, afraid and may give the wrong answer. Then the lawyer should have [the] spirit that we [lawyers] stand for justice, but they only want to win, to justify their [legal] degrees. For me, I never ask questions that normal people can't understand, and if they do not understand, I explain to them again. This is part of the Lawyer’s Code of Conduct in Myanmar, but it is rare to see lawyers [behave] like this.\(^{390}\)

In Mawlamyine, Mon State, lawyers interviewed agreed that legal terminology was unwieldy and potentially disastrous to cases when clients did not know how to navigate legal processes, but added that the Myanmar language spoken by police officers and judicial staff in the courtroom was particularly detrimental to ethnic minority groups. “Women might try to speak with a legal officer or judge, but then they don't understand and don’t want to go back after their first try.”\(^{391}\) This concern was echoed several times by women in focus group discussions in Kachin, Mon, and Chin research areas. A focus group participant in Chin State asserted, “Court judges always decide in favour of the rich people or the Bamar-speaking people,”\(^{392}\) and an ethnic Mon woman said simply, “The courts are for people who can speak Burmese well.”\(^{393}\) According to a lawyer based in Myitkyina:

> We Kachin people live in rural areas, in the mountains. Some Kachin people don't understand the Bamar language, and it is very difficult for them to understand legal concepts. For our social problems, we just go to the traditional tribunal and decide in this customary way. Even for murder, we use customary because we understand it, and the language and [practices] are our own.\(^{394}\)

Women (and men) research participants expressed the need for accompaniment when reporting a case to guide them towards appropriate legal mechanisms. In Kachin State, one male lawyer recommended implementation of community-based “information desks” to inform and direct people interested in initiating a justice claim:

\(^{390}\) Yangon, key informant interview 60.
\(^{391}\) Mon State, key informant interview 43.
\(^{392}\) Chin State, focus group discussion 40.
\(^{393}\) Mon State, focus group discussion 55.
\(^{394}\) Kachin State, key informant interview 11.
I believe that women and the whole community need legal knowledge because [both] complainants and the defendants don’t know how to engage with the process, don’t know how to start the process or where to go. The police are usually not very polite, no[r] the public service officers, so everybody is afraid of them. There would be more access to justice if people had a reception [desk], an information desk or centre, and somebody who would help them go to report. For example, at the train station [when] you want to buy a ticket there is somebody there who you can ask for help, and we need this for legal awareness and civic engagement. There are many procedures, so when people have questions they need [a] place [that provides answers about] where to go, who to ask, how to begin.395

Throughout project activities, women research participants demonstrated a deeply personal interest in enhancing their access to justice: Women saw their own active involvement in legal system reform as central to its success. Although significant challenges remain around women’s access to justice in Myanmar, women and emerging male justice champions are positioned – in their families, communities, and social or political groups – to advocate for positive change. Increasingly, domestic organizations and international agencies are working to broaden understanding of justice mechanisms in Myanmar, cultivate more evidence-based policy recommendations, and widen the scope and scale of legal awareness trainings, legal aid and efforts to increase women’s participation in legal decision-making bodies.

It is unrealistic, however, for external or governmental agencies to ask women and their communities to assume responsibility for improving access to justice without first acknowledging the ways in which structuralized and gendered inequalities deny women meaningful access and input to that very process. Accordingly, one of the first steps towards women’s increased engagement with legal reform and justice initiatives is broad acceptance that existing legal mechanisms, in formal and informal systems, are not currently protecting the rights and interests of women.

For example, women respondents throughout the target areas effectively mapped out available formal and informal dispute resolution options in their communities. But when asked which of these options women used, participants frequently answered that: 1) women did not know where to go, 2) women were unaware how to begin the process, and 3) women did not use any of the options. In other words, when asked generally, women illustrated where local legal mechanisms were and what they were for, but when asked more specifically, they did not view these mechanisms as their own. Despite living next door to her village administrator, one focus group participant in Mon State said, “Women don’t know how to go to the village administrator. We don’t know the process and we don’t know what issues he should be involved with or whether he [will] care.”396

395 Kachin State, key informant interview 19.
396 Mon State, focus group discussion 52.
Voices from the Intersection: Women's Access to Justice in the Plural Legal System in Myanmar

PHOTO: MELISSA K, BOOTH
In the same way, women contributing to a mapping activity in Yangon’s Tamwe Township quickly named the police station, township court, ward administrator’s office, and township development committee office as options for pursuing legal redress. However, when asked if they believed there were legal issues women did not report, one woman responded, “Yes, because we don’t know where to make the claim.”

This unfamiliarity with how existing justice instruments functioned, including who they served and what steps were needed to approach them, appeared to be directly linked to women’s perception of a real and fixed divide between legal mechanisms and the opportunities for women to engage with them. It also illuminated one of women’s most fundamental barriers to justice in Myanmar’s plural legal system: not an absence of options, but the absence of viable options.

Improving women’s access to justice in Myanmar requires programming and interventions that are as sophisticated and contextually relevant as the country’s evolving and complex legal systems themselves. Reforms must include a process by which women are assured substantive consultation and feedback in the exposure of harmful, gendered practices and the development of evidence-based policy recommendations. For example:

- Informal and customary legal systems must be supported with targeted legal awareness and restorative justice trainings, but also viewed, along with women, as storehouses of a wealth of information about local legal practices, justice barriers and enablers, and culturally relevant methods to uproot discriminatory elements;
- Women’s increased participation in adjudication bodies must be accompanied by their own training in gender sensitivity and women’s justice rights; and
- Strengthened women’s protection legislation must also ensure awareness-raising mechanisms to comprehensively educate communities on the function, benefits and procedural application of new and existing legal tools.

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397 Yangon, focus group discussion 85.
RECOMMENDATIONS

The preceding sections detailed the cross-cutting access to justice issues that women throughout the target areas reported experiencing in their lives or witnessing in their communities. The following recommendations originate directly from the narratives, insights and suggestions they shared regarding local solutions and national advocacy to address some of their most pressing justice needs. For the most part, research participants directed their recommendations towards local dispute resolution bodies and actors, their respective ethnic, religious or village administrative leaders, civil society groups, the Union Government, and the men and women living in their home communities.

Recommendations for Women’s Access to Justice Programming

• In acknowledgement of Myanmar’s complex, plural legal system and in recognition of the majority of women interviewed who do not regularly or ever engage with formal legal mechanisms, augment current access to justice programming and research to enhance the justice mechanisms women most commonly use.

• Institute training, coordination and support for “women’s access to justice advocacy units.” These local-level units assemble women and men community members, religious and traditional leaders, legal practitioners and civil society organizations to create open forums for discussing justice pathways, learning statutory and customary legal rights, and collecting information about challenges and enablers in the community.

• Provide technical training to build research capacity for women and community-based organizations to analyse their local justice dynamics and unique legal mechanisms, contribute to a growing national evidence base, acquire data that informs access to justice improvements relevant to them, and ultimately communicate their own policy recommendations directly to members of Parliament and the Government.

• Increase availability of no-cost or low-cost legal services provided in different ethnic languages and the availability of translators/interpreters in the formal justice system.

• Develop local “legal information desks:” accessible, community-based sites with women staff offering detailed information in local languages about how to initiate legal procedures at ward administration offices and each level of the judiciary, with referrals for individuals who can accompany the claimant if desired.

• Institute “one-stop” services that assist women on several fronts including legal reporting, legal counsel, psychosocial and physical health services, legal awareness-building and legal aid referrals.

• Work with men and women court clerks, lawyers, prosecutors, advocates, police officers, relevant medical personnel, civil servants and judges at each tier of the judiciary to increase gender sensitivity and accurately define their roles in improving women’s access to justice and preventing violence against women and girls.
• Implement restorative justice workshops and trainings that respectfully acknowledge traditional, communal concepts of justice while developing avenues for women’s and girls’ individual rights’ fulfilment.

• Introduce or continue to improve secure conditions for women in courtrooms, detention centres, police transport vehicles, jail cells and prisons.

• Develop legal education and gender awareness campaigns that enable women to determine the locally available dispute resolution mechanism that best serves their justice needs without interference by restrictive social norms or gendered legal barriers.

• Utilize and strengthen existing community channels of legal reporting (for example, through youth groups, women’s rights organizations, village development committees, and ethnic or religious-based councils) to improve each link in the reportorial chain through legal awareness, gender rights training and legal aid referral networks.

• Meaningfully increase the percentage of women in front-line or “gatekeeper” justice-delivery positions including village and ward administrators, police officers, legal aid providers, lawyers, members of traditional councils of elders, religious leaders and decision-makers, yat mi yat pa, and heads of 10 and 100 households.

Recommendations for Women’s Access to Justice Promotion

• Foster qualitative and quantitative research projects that rely upon local women as the experts in formulating solutions to their own justice needs, assess the human rights benefits and risks related to formal and informal legal systems, and enrich the baseline data on various forms of economic, normative, physical and psychological forms of violence against women in Myanmar to enhance legal reform advocacy.

• Pursue continued and concerted efforts towards the development of an independent, impartial judiciary that operates openly and accessibly, free from any improper pressure or interference.

• Increase understanding among international bodies operating in Myanmar of the importance placed by local people on informal justice mechanisms and dispute resolution strategies that are indigenous, trusted and viewed as culturally appropriate.

• Ensure that training and reform programmes implemented within and in collaboration with the judiciary, the OAG, the Myanmar National Human Rights Commission, the police, lawyers’ networks, and ward and village administrators are gender-responsive, strengthen rights accountability, promote access to justice for women and girls, and utilize Myanmar’s existing women’s protection and rights instruments (CEDAW, United Nations Security Council resolution 1325 and the National Strategic Plan for the Advancement of Women 2013-2022).
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INTRODUCTION TO THE RESEARCH PROJECT

• Please begin by providing information about the project in order to have the respondent enter into the interview with “free, prior and informed consent” by covering the following (who, what, when, where and why).

• Introduce yourself and the organization: Justice Base, an organization registered in the United Kingdom, is partnering with local organizations in each target area; the project is funded by UN Women.

• The title of the research is: “Women’s access to justice in plural legal systems in Myanmar.” This is a multi-country study being conducted in eight south-east Asian countries using feminist participatory action research. The findings will be used by UN Women to release a regional women’s access to justice report in South-east Asia in 2016.

• When we say “plural legal systems” we are talking about the formal legal institutions (courts, police, judges, etc.) and informal, community-based mechanisms used to resolve disputes (traditional and customary practices, ethnic or religious mechanisms, council of elders or traditional leaders, community-based organizations, etc.).

• Target areas for the Myanmar component of the study are Kachin State, Mon State, Chin State and Yangon.

• The purpose of the project is to answer two main questions:
  » What does access to justice look like for women in the plural legal system of Myanmar?
  » How can an understanding of women’s access to justice in this system be used to enhance women’s access to justice?

• A research project on women’s barriers to justice in Myanmar requires a study of individuals’ experiences with both the formal and informal justice system. We are mapping formal and informal mechanisms, because little published data exists on their processes. The focus on informal mechanisms takes into account that only a small portion of conflicts in Myanmar are submitted to authority figures and even fewer are submitted to Myanmar courts. This study must therefore first map out the avenues individuals use to resolve their problems and how these mechanisms function, and may then address the specific challenges and barriers women face when seeking justice within or outside of them.
• In order to address the issue of women’s access to justice, it is important to understand – as far as possible – the different and complex legal systems that exist in the country, how they are implemented in practice, where there is room for change and how this change can most effectively be enabled.

• Please ask if the respondent would like her/his name and/or organizational affiliation to remain confidential.

• Inform the respondent of his/her right to withdraw from the interview/focus group discussion at any moment.

• Please ask if the respondent is comfortable with you recording (audio) the interview, and explain it is only for your personal notes and will not be shared.

• Please ask if the respondent has any questions before you begin.

QUESTIONS TO GUIDE THE KEY INFORMANT INTERVIEWS

*Please note: Depending on who the respondent is (township judge, issue-specific lawyer, village head, women’s rights activist, parliamentarian, etc.) your questions must be customized to reflect and drill into that individual’s unique expertise. Whether the person is situated within the formal or informal justice system, or as an activist outside of these affiliations should determine the focus and trajectory of your questions. With that said, the following are key elements we want to understand:

GENERAL ACCESS TO JUSTICE QUESTIONS

• First, ask the respondent to describe his/her professional experience/background and any relevant justice or women’s justice issues. Get a full picture of who the respondent is and her/his relevant expertise—this will guide your questioning.

• In your experience, what are the most common types of (legal) problems women face? [Within the area of expertise of the respondent: geographically (Yangon, Central Myanmar, urban/rural, etc.); within an ethnic or political group; within the district court system, etc.]

• Where do women usually go when they have a problem? [This relates to mapping legal options that exist within a community or specific group.]

• What are women’s experiences when using these systems? [Looking for specific, detailed descriptions of cases or experiences.]

• Are there some issues that women do not usually report? Why?

• Are there some issues that people feel are “private”—that should not be decided by law?

• What role does law play at the family level? The community level?
What is your understanding of the meaning of “justice?” Who defines this? What ensures “access” to justice?

MAPPING AND DOCUMENTING THE PROCESS

- Can you describe a specific case in detail that highlights a woman’s experience within the legal system? [Again depending on the respondent, ask about formal or informal system.]
- When a case is taken to a legal system (formal or informal), who is involved (village headman, legal professionals, community-based organizations, police, etc.)? Who started the process? [Did the woman submit the case? Her family? A teacher? An organization?]
- What factors affected the woman’s access to the mechanism? [For example, cost of access or poverty; language; education; ethnic, religious or other identification; availability of support services.]
- What challenges were faced (could be legal, family and/or community)?
- How and why did women decide to use the formal (police, courts, judges) or informal (customary, village) legal system?
- What was the outcome of the case and what was the impact on the woman involved? Was she satisfied with the decision? Did she feel it was “justice?”
- What was the woman’s objective in accessing the process (either formal or informal)? How much participation did the woman have in decision-making? In your opinion did the woman understand her rights and the process she had to go through? What, if any, support existed for her?
- If no action was taken, what accounted for the decision not to take action? Who or what was influential in the decision not to take action?
- What cultural controls or norms in the community encourage, reinforce, discourage or prevent women’s access to dispute resolution mechanisms (whether state or non-state)? What cultural controls or norms contribute to or negate the effectiveness of access? What cultural processes, if any, provide women remedies in lieu of access to the state or non-state dispute resolution mechanisms?
- What factors or forces in the community facilitate or hinder the effective delivery of justice for women by the state or non-state mechanism?
- What do people see as local solutions to the challenges they face? [We want to uncover and highlight local solutions/strategies that may exist within structures that people already use to improve women’s access to justice.]
- What kinds of systems or structures do women see as important to their access to justice?
- What changes would women like to see to improve their access to justice?
RESPONDENTS WITH FORMAL LEGAL SYSTEM EXPERTISE

- Do the state justice mechanisms apply to all, or do they apply to a particular group?
- Are women familiar with the state justice mechanisms and how they operate?
- What are the advantages, if any, of state mechanisms over non-state mechanisms?
- What problems have women encountered with state justice mechanisms?
- What beliefs or attitudes of the actors in the state justice system have adversely affected women who have accessed or tried to access the mechanisms? [Lawyers, judges, police, law officers, clerks, etc.—also consider any differences between male and female actors, e.g., woman judge vs. male judge.]
- What factors (personal, social or institutional) have prevented women from accessing state justice mechanisms?
- If a state mechanism was involved, how did the state actors in the mechanism facilitate or hinder access to justice? What factors constrained the state actors in performing their roles in justice delivery?
- How did the legal professionals affect the woman’s access to justice?
- What factors affected or constrained the legal professionals’ delivery of justice?
- Within the state justice system and its institutions, are there any specialized agencies that handle gender-related cases? If so what is their composition, powers, functions and rules of procedure, and what is their relationship to the other institutions in the system of governance (i.e., in terms of checks and balances, independence, accountability)?
- What is the language policy in the state justice system, including the system of translation and interpretation, if any, for minorities?
- What are national programmes on access to justice or justice reform, if any, including education and training programmes for justice system actors, and community-based and public awareness programmes?
- What are the mandates and programmes within formal legal or national human rights institutions with respect to women’s access to justice?
- Is there a system or programme on free legal aid? What is the availability of government prosecutors and public defenders in criminal trials and legal representation in civil claims?
- Are there any state-sponsored psycho-social and legal services for women and children who are victims of gender crimes or abuse?
- What are the formal laws and policies related to non-state justice systems, including the application of gender equality, non-discrimination and equal protection of legal provisions to them?
Voices from the Intersection: Women’s Access to Justice in the Plural Legal System in Myanmar

• What are key laws and policies related to human rights in general?
• If any, what are the significant laws, policies and jurisprudence or case law related to women’s human rights, including:
  » Formal legal equality and non-discrimination law or policy (as a constitutional policy or statutory norm);
  » Legal guarantees of political, civil, socio-economic and cultural rights;
  » Legal rights in marriage and the family, including property ownership, use and control, and inheritance;
  » Statutes related to gender-specific abuses (e.g., gender-based violence);
  » Case law involving women’s human rights (in any area), including illustrative cases of women’s right of access to justice; and
  » Public interest litigation involving women that is pending before the courts.
• What needs of women (political, socio-cultural, economic, etc.) are not being addressed by the justice system?

RESPONDENTS WITH INFORMAL LEGAL SYSTEM EXPERTISE

• What are the, if any, non-state institutions or mechanisms in the community (related to respondent expertise) that resolve disputes?
• Is the non-state justice mechanism part of a religious or customary legal tradition?
• How was this mechanism created? What is the source of its authority and legitimacy?
• Who constitutes and controls the mechanism?
• Are women represented in the mechanism? Is there any barrier to women’s participation or representation in the mechanism?
• To whom is the mechanism accountable?
• What kinds of disputes are brought before this mechanism? May women bring gender-specific cases or complaints for resolution here?
• Why do parties or women bring their disputes to this mechanism?
• What rules, oral or written, govern the non-state mechanism? Who made those rules? Are the rules responsive to women’s needs or to violations of women’s rights?
• How does the mechanism resolve disputes?
• What is the participation of the disputants in the process? [Detail process.]
• What results or forms of resolution can be expected from the mechanism, especially in gender-specific cases (e.g., domestic violence)?
• How are the resolutions implemented or enforced? What are the problems in the implementation or enforcement of the resolution?
• How does the community view dispute resolution by the non-state mechanism?
• What are the advantages, if any, of choosing the non-state mechanism over the state mechanism?
• How does the non-state justice mechanism relate to the local system of governance?
• Are there “indigenous” or tradition-based conceptions of “rights” and “justice” in the community? Or conversely, “injustice” and “wrongs”? Are there community principles that embody these conceptions, or traditions that communicate values or standards of justice? What are the linguistic expressions of these conceptions in the local language? Are there other cultural expressions of these conceptions?

LINKS BETWEEN FORMAL AND INFORMAL (UNDERSTANDING PLURALITY)

• How does the state relate to non-state justice systems? What are areas of overlap, cooperation, conflict?
• Do people often move between the two and why? [Dissatisfaction with sentencing of one leads to the other?]
• Does state law allow non-state mechanisms to resolve disputes? If yes, what disputes, particularly gender-specific disputes, are allowed? If yes, how does the state reinforce (or negate) the dispute-resolution function of non-state mechanisms? If no, what does the state do when non-state mechanisms resolve disputes?
• What is the difference, if any, in how state and non-state mechanisms resolve gender-specific disputes?
• Should the state support non-state justice systems? Should the state integrate into the official justice system non-state justice mechanisms when they are perceived to be effective? Should non-state justice mechanisms be allowed to operate independently? Should the state circumscribe their functioning? What are the implications for women and communities of state engagement with non-state justice systems?
PARTICIPATORY ACTIVITIES

Since feminist and participatory research methodologies seek to bring about social change, this project endeavoured to combine the documentation of women’s justice needs with support for increased local justice advocacy and community-based dialogue around justice barriers and reform. The following activities were designed to involve civil society organizations, legal practitioners, and most importantly, women, in project design, implementation and analysis of findings.

**National Coordination Workshop:** Justice Base organized a National Coordination Workshop in Yangon from 22-24 January 2014 to kick off the first participatory event with a series of consultations and inclusive learning sessions that informed project activities. A total of 22 stakeholders and representatives from peer organizations, United Nations entities, and the project’s local partner teams were invited to learn about the research undertaking and share insights related to their work on women’s rights and access to justice.

The workshop’s first day was opened to members of several organizations working on the rule of law, ethnic social issues or women’s rights. Attendees were introduced to the research project’s scope, methodology and planned activities, and were asked to provide feedback through mapping exercises and design worksheets. The workshop’s second day welcomed only the local research team members who would be collecting data in their respective areas of Yangon, Mon State, Chin State and Kachin State. Eight women researchers decided by consensus how to structure the field visits and determined parameters related to team and focus group sizes, participant backgrounds, interview questions, ethical considerations, and target villages and informants. The final day allowed the lead researchers to collate the information into a national research plan.

**Analysis sessions:** Over the project lifetime, five analysis sessions were conducted - one in Yangon with partner organizations, key members of civil society and women’s rights advocates, and one in each target area at the conclusion of the two-week data collection period. The analysis session in Yangon elicited

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398 United Nations Offices that were represented included UNDP Myanmar, the UN Resident Coordinator’s Office in Myanmar and UN Women in Myanmar as well as the UN Women regional office in Bangkok

399 Analysis sessions included one or both lead researchers, members of the local research team, leaders of the partner organization, and, when possible, local stakeholders, including community members, legal practitioners and representatives of civil society
feedback and suggestions about which townships and stakeholders to target through the research, and offered an opportunity for informed discussion about problems and possible solutions related to women’s access to justice in Myanmar. The analysis sessions that brought field research to a close in the four target areas encouraged local research teams to reflect on the data and narratives they collected, and organize the findings into policy recommendations.

**Mapping and photo story exercises:** In addition to the semi-structured interview guidelines,400 local research teams used mapping and storyboard activities during focus group discussions to stimulate creative, secure dialogues about women’s access to justice. After researchers introduced project objectives and outcomes, focus group members were asked to map out all of the options that existed in their communities for resolving disputes. The maps usually depicted differing combinations of formal and informal mechanisms, including the village or ward administrator; police; yat mi yat pa (highly respected person); township, district and/or state courts; community-based organizations; religious centres and traditional councils of elders. Out of the options illustrated on the map, respondents were then asked to specify which were most likely to be approached or used by women. Respondents used the visual representations as a springboard to sharing stories of women’s specific experiences when engaging with the identified legal mechanisms.

The “Photo Story” activity was inspired by the Participatory Video methodology developed by InsightShare, an organization specializing in innovative tools for advocacy and knowledge sharing. Research teams for this project were not equipped with video cameras, but did employ the concept of “storyboarding” used in the production of video content. After focus group participants had discussed specific cases and perceptions related to women’s access to justice, they elected one of the shared stories as most representational of women’s justice experiences in their community. The story’s sequence of key events was organized and collectively illustrated by participants into the six frames of a “storyboard.” In some focus group discussions, participants then elected to act out the narrative scene-by-scene as sketched in the storyboard, using participatory role-play to prompt further conversations about the event’s significance in the community and its justice impact on the woman involved.

**Data validation:** Two data validation sessions, one in Yangon and one in Mawlamyine, were held after data collection concluded in the four target areas. Sessions invited project researchers, key stakeholders, legal practitioners, and women’s rights groups to analyse preliminary findings and provide feedback on legitimacy or any gaps perceived in the research. Lead researchers presented the salient legal cases and cross-cutting justice themes identified during fieldwork to collect participants’ impressions, misgivings or verification of accuracy.

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400 Please see Annex 1: Guideline for Key Informant Interviews.
SELECTION OF TARGET RESEARCH AREAS

During project conception, the target areas were chosen for the richness of their plural legal traditions, the relative absence of similar research efforts, and by drawing on Justice Base’s existing networks and research partners. As shown in the maps below, the three target areas outside of Yangon together border four countries, creating diverse, evolving zones of ethnic, religious and legal traditions that are interlaced with or isolated from Myanmar’s central legal and governance institutions.

Townships in the city of Yangon provided unique conditions to evaluate how women engage with different legal systems in a dense urban setting where formal legal mechanisms are more readily accessible. Similarly, the state capitals of Mawlamyine, Mon State, and Myitkyina, Kachin State, allowed for close study of the intersection of legal systems in cities, and contrasted with outcomes and preferences documented in the semi-rural areas outside them. Only in Chin State, where researchers were based in Falam, the district capital and former state capital, was the state capital not utilized as the research hub. Brief snapshots of the project’s target research areas are outlined below.

**Mon State** lies on the coast of the Andaman Sea and shares a narrow border with Thailand and Myanmar’s Kayin, Bago and Tanintharyi regions. Research was conducted in Mawlamyine, the state capital and fourth largest city in Myanmar, and villages in the townships of Paung, Thanbyuzayat and Khawzar, and the sub-township of Ye. Focus group respondents were entirely ethnic Mon Buddhists, 23 per cent men, with a median age of 32.5. Outside of Mawlamyine, the villages included in this study are largely semi-urban or rural, reflecting that 77 per cent of the state’s residents live in rural areas. Respondents were largely rubber or paddy farmers, day labourers, merchants or government schoolteachers.

Research in **Yangon Region** centred around Yangon City in Tarmwe, Hlaingtharya, East Dagon and Dala townships. The region is the country’s smallest but most densely populated at 5.9 million people, and remains Myanmar’s commercial hub despite losing its status as the nation’s capital in 2005. The four townships were chosen as representative of the city’s highly industrialized areas, but with widely varying degrees of service provision and income levels for residents. Focus group respondents (13 per cent men) had a median age of 37 and were 65.8 per cent ethnic Bamar Buddhists, 23.7 per cent Muslim and 10.5 per cent Christian.

Predominantly rural **Chin State** in northwestern Myanmar shares its western border with India and Bangladesh and is one of the poorest regions in the country based on indicators of food insecurity, health, infrastructure and migration. 

401 All maps sourced from the Myanmar Information Management Unit website, www. themimu.info.
404 Myanmar Information Management Unit, Chin State, http://themimu.info/states_regions/
of the respondents in this target area identified as members of differing ethnic Chin tribes and varying Christian denominations. Research was conducted in Falam and Thantlang townships as well as two focus group discussions held with ethnic Chin residents of Kalaymyo Township in the neighbouring Sagaing Region. The median age of respondents was 45, and unlike the other three target areas, local researchers chose to limit the focus group discussions to women only to better encourage and shelter discussion topics. Individual key informant interviews were held with nine men across the villages and towns visited.

Although northernmost Kachin State is the second largest state in terms of landmass, it is among the least populated, with 1.44 million people living mostly in rural areas. Research was conducted in wards and two camps for IDPs in Myitkyina, the state capital, as well as in Mogaung and Waingmaw townships (the latter also included visits to two camps). The median age for participants, 27 per cent of whom were men, was 36.5; most self-identified as Jinghpaw or Longvo (Maru) Kachin, though 7 per cent were Bamar Buddhist. In addition to a substantial demographic of university or theology students, respondents were largely employed as farmers, day labourers or vendors of local goods.

**SELECTION OF RESEARCH PARTICIPANTS**

Another important area of flexibility provided to local research teams was the selection of project respondents. During the National Coordination Workshop, members of partner organizations decided by consensus that: 1) a target of 100 individuals would be achieved in each area through a combination of focus group discussions and key informant interview methods, 2) focus group discussions would not exceed 10 members (nor include key informant interview respondents), and 3) respondents would be age 18 or over and representative of urban and semi-rural populations, and a wide range of educational backgrounds. Local research teams debated and formulated plans for participant selection that included specific communities to visit and demographics to target within the parameters of the national research framework.

For key informant interviews, researchers targeted respondents with experience in local governance, community development, and law or adjudication processes including village and ward administrators (5), members of Parliament (3), current and retired judges (5), religious leaders such as abbots, monks, pastors and reverends (13), IDP camp managers (1), yat mi yat pa (1), Myanmar Women Affairs Federation (MWAF) chairwomen (7), lawyers (9), civil servants (3), youth group leaders (2), and multiple founders or directors of legal aid and rights-based organizations. After initial data collection, lead researchers also held a findings-sharing consultation with 25 parliamentarians in Naypyitaw.
ETHICAL CONSIDERATIONS

Prior to the inception of project activities, Justice Base and the project’s lead researchers developed a risk assessment plan using tools employed by partner organizations in Myanmar and in accordance with Putting Women First: Ethical and Safety Recommendations for Research on Domestic Violence Against Women published by the World Health Organization in 2001. Risk identification cooperatively involved the evaluation of environmental, political and ethical factors, with careful attention given to the project deliverables, assumptions, constraints, resources and costs.

Research partners were chosen for their proven ability to work within their respective local contexts, without interference or reprisal from local or national governance authorities, and for their demonstrated sensitivity to ethical research methodologies that “do no harm.” Team members were given the option of withdrawing from the project without prejudice should security concerns arise, and lead researchers were responsible for scheduling regular debriefing meetings with local research partners to continually assess the security environment, and avert negative outcomes during and after data collection.

No interviews or focus group discussions were held without each respondent's free, prior and informed consent, and, when requested, that of her or his associated organization or community leadership. Information shared by respondents was ensured confidentiality, and participants were informed that they were free to withdraw from discussions, consultations or interviews at any time. Key informant interviews and focus group discussions were audio recorded solely for the purpose of transcribing notes for Justice Base after the events concluded, and participants were given the option to fill out basic data forms with demographic information that was entered into a confidential Justice Base database. None of this identifying information has been shared, and it does not appear in this report.

Local researchers were briefed during the three-day technical training workshops on how to respond to situations in which security was compromised, respondents displayed distress or high levels of emotion during an interview, or the discussion became unwieldy or uncomfortable to participants. In the event that an emergency situation was revealed during discussions, local research partners and lead researchers prepared local referral options for support before commencing fieldwork, but the occasion to use emergency referrals did not arise.
Justice Base aims to promote the rule of law in transitional and post-conflict societies by building the capacity of local lawyers and supporting nationally owned rule of law initiatives. We endeavour to strengthen the capacity of lawyers to engage in – and guide – the national discussion on rule of law needs and priorities, develop domestic rule of law initiatives, and lead legal and institutional reform efforts in emerging democracies.

Justice Base currently implements programmes in five thematic areas:

**Training and Workshops.** Justice Base has facilitated high-level workshops and seminars for lawyers, activists, journalists and civil servants on topics including international law, human rights documentation, humanitarian law, constitutional federalism, transitional justice and the rule of law.

**Legal Aid.** Justice Base supports the development and administration of programmes to provide legal representation to individuals from grass-roots communities in Myanmar, with a particular focus on populations that are vulnerable to discrimination, violence or restricted access to state institutions.

**Legal Reform.** Justice Base works on procedural and substantive legislative reform. Justice Base has hosted seminars for lawyers, civil society and government officials on the law-making process, with a focus on transparency and the importance of public consultation.

**Access to Justice Research.** Justice Base has conducted a preliminary assessment of access to justice needs in five low-income communities in the Yangon region and plans future research activities to focus on barriers to justice at the community level, considering both formal and informal justice systems.

**Fair Trial Standards Assessment.** Justice Base assesses the compliance of courtroom practice in Myanmar with domestic and international fair trial standards. Currently, Justice Base pursues this objective by working with courtroom lawyers to improve their capacity to observe and identify violations of fair trial standards. Justice Base’s long-term goal is to support the development of a fully transparent, locally led trial monitoring project in Myanmar.