

UNDP Access to Justice and  
Informal Justice Systems Research

# KACHIN STATE



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*Salt Between Split Beans*

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# ABBREVIATIONS AND ACRONYMS

10 HHH, 100 HHH	10-Household Head, 100-Household Head (leader of a group of 10 or 100 households)
CLA	Culture and Literature Association
DNK	Do Not Know
GAD	General Administration Department, Ministry of Home Affairs
IDP	Internally Displaced Person
KIA	Kachin Independence Army
KIO	Kachin Independence Organization
RTA	Refuse To Answer
SGBV	Sexual and Gender-Based Violence

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Photo: Landscape in Nant Mun Village, Banmaw Township, Kachin State

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## FOREWORD

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

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



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

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

**Peter Batchelor**  
Country Director  
UNDP Myanmar



# EXECUTIVE SUMMARY

Photo: Children playing in Moe Nyin District of Kachin State

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

The research sought to answer three main questions:

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

The research methodology is outlined in Annex I. This report summarises the findings in Kachin State.<sup>1</sup> It first reports findings in relation to non-internally displaced (non-IDP) respondents<sup>2</sup> and then reports specifically in relation to IDP respondents. It is important to note that the findings are indicative rather than representative, because of the sampling methodology, and cannot be generalised to any wider population.

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

The title "Salt Between Split Beans" describes how powerless someone feels when thrown into bad circumstances created because of a clash between others and which can only improve if the other parties resolve the conflict between themselves. The Kachin report details the negative impact the armed conflict between the

Tatmadaw and the Kachin Independence Army has on people's lives in the State, including their access to justice.

The Introduction to this report (Chapter 1) outlines the conceptual underpinnings of the study, providing a context for the research findings and analysis that follows. It relies on three key concepts fundamental to good governance: (i) the legitimacy of authority; (ii) public trust in the legitimacy and exercise of judicial authority; and (iii) the rule of law, including accountability of police, judges, and law officers. As in all countries, public trust in the legitimacy of the justice system is linked to shared values in society. Those shared values are typically based in human rights, in particular, substantive equality, non-discrimination and the right to equal and just treatment according to due process under the law. Shared values are therefore central to the exercise of access to justice, and inform people's expectations of judicial processes and outcomes. They also imply a common expectation of accountability – that those who hold a public mandate are responsible and answerable to the public for their actions and, simultaneously, the public has a right to hold public officials to account.

Chapter 2 describes the study sites in Kachin State and the demographic and socio-economic and cultural background of the main set of respondents (i.e., non-IDP respondents). Chapters 3 to 6 present and analyse the research findings in respect of these respondents. Chapter 7 focuses specifically on IDP respondents.

Chapter 3 provides the context within which respondents reported on the disputes they and their communities were involved in during the previous year. It begins by reporting on levels of social trust among respondents. Overall, respondents demonstrated strong allegiance to

<sup>1</sup> Study sites and respondents in Kachin State were purposively selected. The findings describe only the study sample. Statistically relevant comparisons cannot be made among respondents, and the findings cannot be generalised to any wider population.

<sup>2</sup> In this report, "respondent" is used to refer to any person who participated in the research study, including those who participated in focus groups and interviews.

family and community and tended to distrust “outsiders”.

Chapter 3 also examines respondents’ perceptions of certain dimensions of justice and law. Overall, respondents clearly preferred disputes to be settled locally. Virtually all respondents agreed that procedural fairness is more important than obtaining a favourable outcome to a dispute. Very large majorities agreed that men and women have equal value and equal responsibility for caring about culture and tradition, that everyone deserves equal care and concern by the government regardless of religion or ethnicity, and that people are able to seek help and obtain a remedy and fair outcome following an injustice. Urban respondents were more likely than rural respondents to favour transitional justice as the basis for building a new Myanmar.

It is worth noting also that respondents overwhelmingly cited wealth and education as the main factors that determine how well a person is treated in Myanmar society. Generally, the respondents are not engaged with the formal justice system. They often did not know or misunderstand the law. Nonetheless, almost four fifths of respondents perceived that not all people have equal rights before the law in Myanmar.

Chapter 4 examines the nature of the disputes that respondents had been involved in and which types of dispute they considered to be of priority. The most common disputes, and those of greatest concern, related to land and to debts owed by others. On the basis of their personal encounters with public officials, respondents reported that abuse of public authority is not uncommon.

Chapter 4 also examines particular issues that were apparent in Kachin and strongly associated with reported disputes. Land-related disputes, drug-related problems and issues arising

from the political economy of conflict and resource extraction are sufficiently significant to have become community problems. Sexual and gender-based violence (SGBV) is a particular issue of concern, and is exacerbated by social and cultural norms.

The respondents feel they are caught in the middle of the armed conflict between the Tatmadaw and the Kachin Independence Army (KIA). They suffer from a lack of security and protection, perceive an absence of accountability and are frustrated by being unable to seek redress for the negative impact of the conflict on their lives.

Some judicial actors linked the issue of drugs to the ongoing conflict, and some recognised poverty as a contributing factor to the drug problem. Drug-related cases account for a significant proportion of the criminal justice caseload, particularly in jade mining communities.

How people went about trying to settle their disputes and resolve their concerns is analysed in Chapter 5. Respondents overwhelmingly opted to attempt to resolve their disputes locally—a communal process driven by the principle of *nah lehmu*, coming to a common understanding between parties in order to find a satisfactory outcome—but were largely unsuccessful. In over three quarters of cases, complainants first tried to settle the dispute by direct negotiations, and some subsequently sought assistance from third parties. Significantly, over 60% of the disputes of greatest priority concern remained unresolved. This indicates that respondents’ access to justice was extremely limited. Some complainants did not seek help from anyone or did not take any further action following unsuccessful negotiations, for reasons including feelings of fear, resignation or shame.

In Kachin there is a wide range of pathways for settling private disputes outside the formal jus-

tice system. It is evident that traditional cultural practices are being adapted to the modern world. People often seek help with dispute resolution from ad hoc decision-making committees of respected community members, which are flexible and prone to take “social” considerations into account and allow for mitigating factors when making decisions. There is little or no interaction between the administrative and formal justice system and the customary or traditional systems.

Chapter 6 reports on respondents’ perceptions and attitudes towards the justice system and those who have a role in the provision of justice services – judges, law officers, the police and community leaders. It revisits the matter of shared values, with a focus on the issues of corruption and the public accountability of officials.

Respondents expressed confidence in the competence of judges, law officers and the police, but were less assured that their values aligned with shared values such as fairness, respect and a lack of corruption. This might reflect respondents’ relative lack of exposure to the formal justice system. In contrast, large majorities believed that community leaders are aligned with community priorities and do ascribe to shared values. Overall, judges and the police were the least trusted of the key judicial actors and community leaders the most trusted.

Chapter 6 also reveals both a widespread perception and experience that public officials do not always treat people equally. Respondents consider the poor are most at risk of not being treated equally with others under the law when charged with a criminal offence. A majority of respondents would or might report an incident involving corruption; they expected action to be taken as a result but did not have high expectations of official accountability. A majority of those unlikely to report corrupt practice

cited corruption itself as inhibiting attempts to secure accountability. They attributed their reluctance to report to fear that they would have to pay and apprehension about having to deal with bureaucracy or resignation that nothing would be done. These factors clearly impede access to justice.

Chapter 7 focuses on IDP respondents and reports findings in the same manner as previous chapters. These 100 respondents were resident in two IDP camps on church premises. The vast majority were Jinghpaw or Kachin Christians. In comparison with other respondents, IDP respondents were more heavily represented at lower levels of education, less likely to be literate in Myanmar, twice as likely to have a person with a disability within their household, much more likely to be in the lowest household income brackets and much less likely to possess household assets. Almost one in three reported that they had no one from whom they could receive assistance if needed.

IDP respondents had rather low levels of social trust. Like other respondents, they trusted family and relatives the most and people from outside the community the least.

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

An overwhelming majority of IDP respondents (higher than that of other respondents) believed that wealth determined how well a person is treated in Myanmar society, and large

majorities also believed that political connections (a significantly higher proportion than that of other respondents) and education were determining factors. Like other respondents, IDP respondents were more familiar with the police than other judicial actors. Almost three quarters of IDP respondents perceived that not all people have equal rights before the law in Myanmar.

Unlike other respondents, IDP respondents who had been involved in disputes were most commonly in disputes related to working hours or wages, and fights. IDP respondents reported being subject to labour exploitation, wage discrimination, and discrimination in education and access to health care.

Like other respondents, IDP respondents felt they are caught in the middle of armed conflict. They wished to return to their home villages but were prevented from doing so by fear, insecurity and the lack of economic and educational opportunities. IDP respondents did not generally enjoy good relationships with their host communities. Domestic violence and other forms of sexual abuse and exploitation were not uncommon in the IDP communities and there were few repercussions against the perpetrators.

In resolving their disputes, IDP respondents showed stronger self-reliance than others. They negotiated directly with the other party in almost all cases, and almost half of these disputes were settled, with or without the assistance of a third party. Less than one quarter of their priority concerns remained unresolved. Third parties who assisted with dispute settlement included key figures in IDP camp administration.

IDP respondents' attitudes to corruption and the accountability of public officials broadly mirrored those of other respondents. They too expressed confidence in the competence

of key judicial actors but tended to doubt that those actors aligned with shared values such as fairness, respect and a lack of corruption. Very large majorities of IDP respondents thought that judges, law officers and the police would expect additional payments for their services. IDP respondents' perceptions of the police were significantly less positive than those of other respondents. Like other respondents, IDP respondents believe that officials do not treat people equally, and that the poor are especially disadvantaged in this respect.

A clear majority of IDP respondents would or might report a hypothetical incident relating to corruption in the context of applying for land registration, but fewer would do so in the context of renewing identity documentation. Those who would report corruption were most likely to expect as an outcome that action would be taken against the offending official. Those who would not report corruption cited the existence of corruption and their own fear as influencing their decision.

The overall conclusions and recommendations arising from this study are presented in Chapter 8. The study confirms the fundamental values of equality and accountability, and the associated issue of low public trust in judicial authority, as central to the exercise of access to justice. Respondents' experiences of differential treatment on the basis of ethnicity, religion, sex and vulnerability highlight their aspirations for equal recognition, and for fair and equitable treatment by the State and others. Efforts aimed at rebalancing structural inequalities and overcoming ingrained patterns of marginalisation and exclusion should therefore be a priority for the State in its interactions with the people.

Respondents clearly expressed their adherence to the principle of public accountability and their expectation that it would be delivered as of right. The evident prevalence of discriminatory attitudes and practices among



state authorities imposes severe restraints on access to justice. The existence of corruption and fear of retribution are important factors that inhibit people's attempts to secure the accountability of public officials.

The report identifies four priorities for future action to address the lack of public accountability: (i) to promote the concept and practice of administrative justice (broadly construed to include all legitimate means of seeking redress in relation to abuse of public authority and quasi-judicial decision-making by officials of government agencies<sup>3</sup>); (ii) to strengthen measures targeted at addressing corruption; (iii) to seek better understanding of the concept of criminal torts under Myanmar's common law system; and (iv) to initiate conversations about transitional justice.

Enhancing public trust in the justice system is another priority. Policies directed towards promoting shared values (such as fairness, respect, equality before the law, etc.), especially in the form of increasing transparency, independence and fairness in the adjudication process, will be important. Greater transparency will also benefit other processes, such as the return and redistribution of land previously seized by the State.

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<sup>3</sup> Administrative law is a major area of concern, given that people have no formal right to be heard or right to appeal important decisions – even if correctly made – by non-judicial government officials.



# CHAPTER 1

# INTRODUCTION

Photo: Vendors selling flowers and fruits in a local market in Myitkyina, Kachin State

## BACKGROUND TO THE RESEARCH

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

This second phase of research broadens and deepens the focus of the earlier work to include specific attention to informal justice systems. One of the main findings of the 2013 mapping, echoed in a subsequent and separate piece of research carried out in Mon and Yangon in 2014,<sup>4</sup> highlighted that a large majority of disputes of any kind are settled at the ward and village level, without resort to the formal justice system.

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

## RESEARCH PURPOSE AND METHODOLOGY

The purpose of the study was to cast light on the formal, quasi-judicial/administrative and informal processes of justice, and why and how people use them to resolve their disputes and grievances.

The research sought to answer three main questions:

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

The research methodology is presented in Annex I. It is important to note that, given the specific selection of study sites and respondents<sup>5</sup>, the findings describe only the study sample.<sup>6</sup> Statistically significant comparisons cannot be made among respondents and the findings cannot be generalised to any wider population.

## CONCEPTUAL OVERVIEW

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

<sup>4</sup> Myanmar Legal Aid Network, *Between Fear and Hope: Challenges and Opportunities for Strengthening Rule of Law and Access to Justice in Myanmar* (September 2014).

<sup>5</sup> In this report, "respondent" is used to refer to any person who participated in the research study, including those who participated in focus group discussions and interviews.

<sup>6</sup> This report includes findings obtained from focus group discussions and key informant interviews conducted as part of pre-testing the research instruments in Sittwe Township. However, findings from the household semi-structured interview questionnaire are not included as the instrument was revised following the pre-test.

concepts to the exercise of political authority in Myanmar.

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

Legitimacy promotes compliance with the law, encourages cooperation with actors in the formal justice sector, and has the potential to facilitate community engagement in a way that enhances the social, political and economic development of communities.<sup>7</sup> Public trust in the justice system and its legitimacy promotes trust in other public institutions because it provides some guarantee against possible abuses by other such institutions.<sup>8</sup>

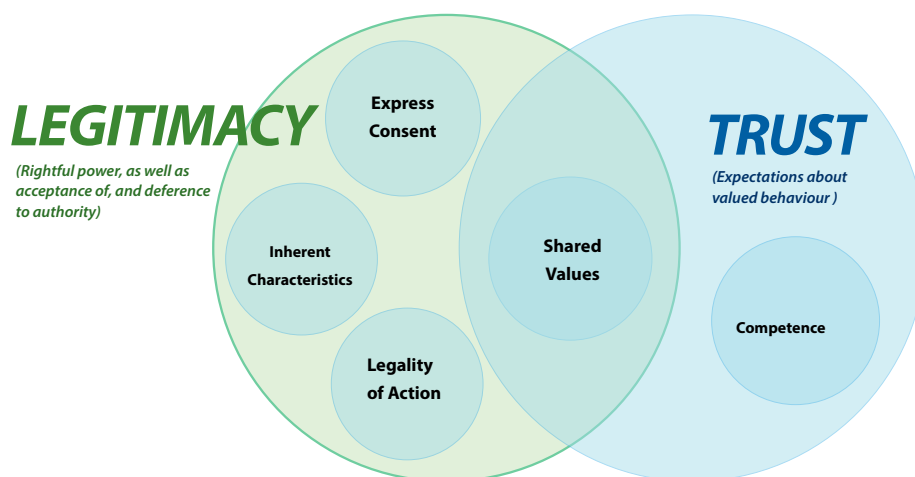
Trust is a function of competence and shared values. In other words, public trust in the justice system depends on those who play a role in the system having the competence (knowledge, skills and resources) and right intentions to do

what the public trusts them to do, that is, to act in ways that the public considers effective, fair and responsive to local needs and priorities.<sup>9</sup> Consequently, when public officials succumb to bribery or to external influence/pressures, or act in discriminatory ways, these behaviours represent a specific set of barriers to trust that inhibit access to justice.

Legitimacy also concerns shared values. Legitimacy has been defined as including three elements: (i) express consent; (ii) express consent grounded in the authority's conformity to standards of legality; and (iii) shared values, or right intentions.<sup>10</sup> In the Myanmar context, this definition was extended to include: (iv) inherent characteristics of the authorities, including judicial and law enforcement.

Thus, the concepts of legitimacy and trust intersect and overlap in the realm of shared values (Figure 1.1).<sup>11</sup>

Figure 1.1 Legitimacy and Trust



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

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

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

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

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

This study reveals shared values to be central to the exercise of access to justice.<sup>12</sup> They also inform people's expectations of judicial processes, whether in formal, quasi-formal/administrative or informal contexts. These shared values include equality before the law<sup>13</sup>, non-discrimination, respect for others, fairness and a lack of corruption in society. At community level, they relate to equality and non-discrimination in social affairs, and transparency, independence and fairness in judicial processes. These values relate to fundamental principles of human rights.<sup>14</sup>

These shared values also imply a common expectation of accountability. Accountability is one of the prerequisites of democratic or good governance. It means holding elected or appointed officials charged with a public mandate responsible and answerable for their actions, activities and decisions. Civil society plays an important role in holding those in public office to account. Accountability seeks to know who is liable for what and what kind of conduct is illegal.<sup>15</sup>

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

by the law, especially through an independent and accountable judiciary.<sup>16</sup> Progress in each of these areas will vary from one context to another, and the different goals may sometimes appear to be in tension with one another, for example between public security and illegal migration on the one hand, and human rights protections on the other.

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

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

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12 See footnote 1 and Annex I.

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

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

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

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

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



## CHAPTER 2

# CHARACTERISTICS OF STUDY SITES AND RESPONDENTS

Photo: Local marching band practicing in Myitkyina, Kachin State

This chapter provides an overall description of the study sites and the demographic, socio-economic and cultural characteristics of non-IDP respondents. It also looks at how respondents access local officials and services and the other means of support respondents turn to in times of need. (See Chapter 7 in respect of IDP respondents.)

## OVERVIEW OF STUDY SITES

Research was conducted in communities located in the northern (Putao), southern (Banmaw), western (Moe Nyin) and central (Myitkyina) parts of Kachin State (Map of study sites). In each of these four districts, the study centred on one selected township: Putao, Banmaw/Bhamo, Moe Nyin/Mohnyin and Myitkyina respectively. In each township, two wards and/or villages were purposively selected in close consultation with General Administration Department (GAD) officials. In Myitkyina and Banmaw/Bhamo Townships, the study was also carried out in two camps for internally displaced persons (IDPs).

Putao was the most remote of the townships visited, and was generally considered by some state officials to be “peaceful”.

One township administrator explained that as Myitkyina and Banmaw are located on opposite sides of the Ayeyarwaddy River, there was not much direct trade carried out between the two townships. There was significant military presence along the main road that connects Myitkyina and Banmaw towns.

Moe Nyin Township was described as a “hub” that connects Kachin State to lower Myanmar and therefore enjoys good communication and transportation routes. Moe Nyin is also a major rice producer for the rest of Kachin State. More significantly, Moe Nyin District includes Hpa

kant Township, which is the location of extensive jade mines.

Kachin State was described as a part of Myanmar that is rich in natural resources, although some state officials also noted that there is unrest there due to armed conflict.

## Cultural Observations

The Kachin people generally identified six main clans within their ethnic group: Jinghpaw, Lacid/Lashi, Lhaovo/Maru, Lisu, Rawang and Zaiva/Atsi.

## Demographic Observations

Study sites across Kachin State were generally demographically heterogeneous, their residents being a relatively diverse mix of people of different ethnicities and religions.

Moe Nyin was the only one of the four townships in which the Kachin were a small minority– the majority population was Shan. Lisu and Rawang populations are generally concentrated in the northern part of Kachin State, including Putao.

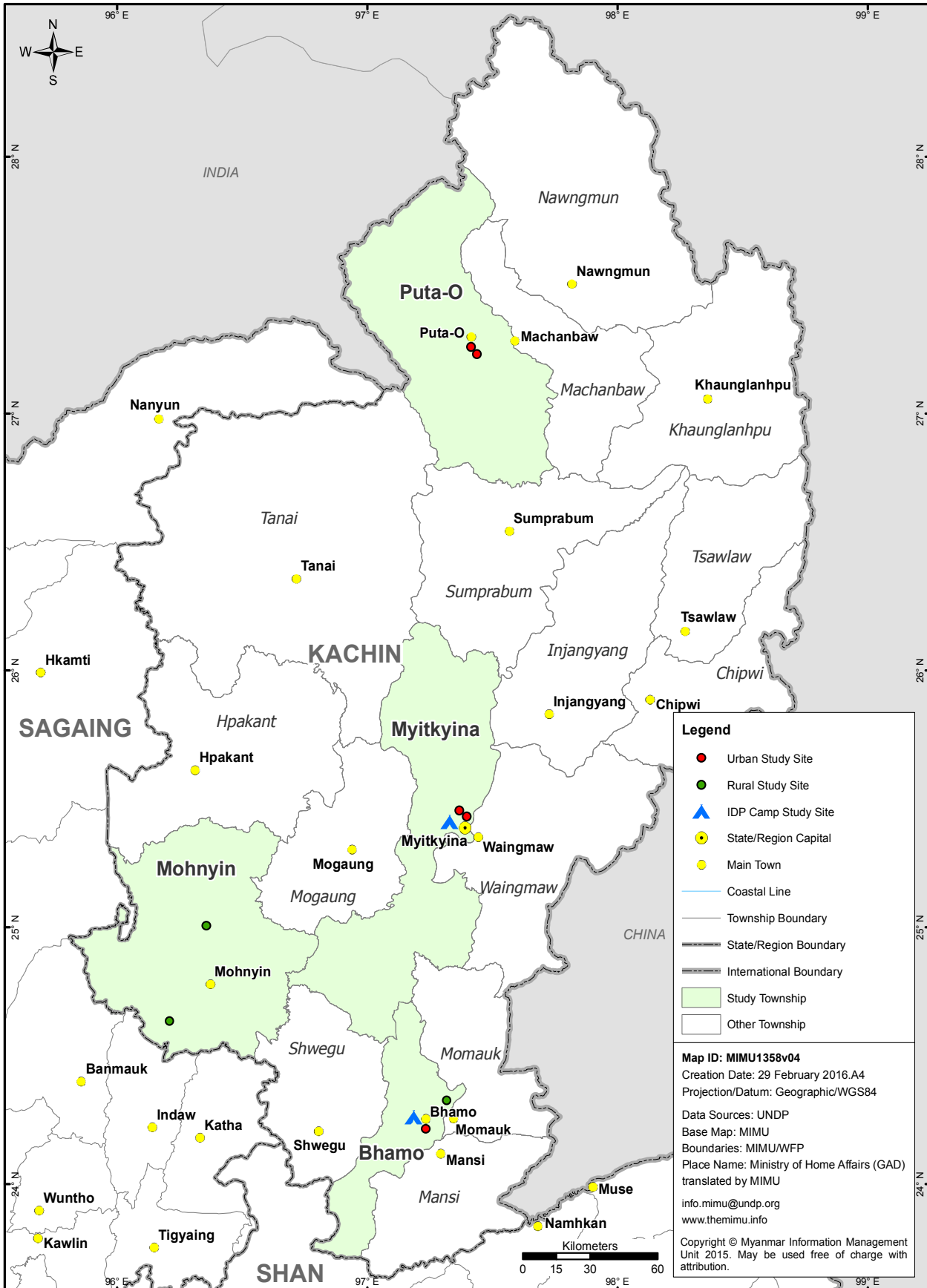
## RESEARCH RESPONDENTS

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

A total of 300 adult respondents (150 females and 150 males) were interviewed across eight wards and villages in four townships of Kachin State. The median age of the respondents was 43 years; the youngest was aged 18 and the oldest 69. About three quarters (73.3%) of the respondents were married, at the time of the interview.



Myanmar Information Management Unit  
**UNDP A2J-IJS Study Sites (Kachin)**



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



## Cultural Characteristics

Respondents identified their ethnicity and religion.<sup>17</sup> With regards to ethnicity, respondents' answers were reclassified into seven categories<sup>18</sup>: Jinghpaw, Lisu, Rawang, "Other Kachin"<sup>19</sup>, Shan Ni<sup>20</sup>, "Other Shan"<sup>21</sup> and "Others"<sup>22</sup>. The distribution of respondents by ethnicity and sex is presented in Table 2.1.

In relation to religion, respondents identified themselves variously as Buddhist, Christian<sup>23</sup> and Muslim. The distribution of respondents by ethnicity and religion is presented in Table 2.2, and by township and religion in Table 2.3.

Table 2.1 Respondents by Ethnicity and Sex Rakhine Population

Ethnicity	Sex		TOTAL
	F	M	
Jinghpaw	25	25	50
Lisu	25	25	50
Rawang	25	25	50
Other Kachin	21	9	30
Shan Ni	8	27	35
Other Shan	15	10	25
Others	31	29	60
<b>TOTAL</b>	<b>150</b>	<b>150</b>	<b>300</b>

Table 2.2 Respondents by Ethnicity and Religion

Ethnicity	Religion			TOTAL
	Buddhist	Christian	Muslim	
Jinghpaw	--	50	--	50
Lisu	1	49	--	50
Rawang	--	50	--	50
Other Kachin	1	29	--	30
Shan Ni	35	--	--	35
Other Shan	18	7	--	25
Others	44	6	10	60
<b>TOTAL</b>	<b>99</b>	<b>191</b>	<b>10</b>	<b>300</b>

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

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

19 Including Kachin, Hkahku, Lhaovo/Maru, Lacid/Lashi and Zaiva/Atsi.

20 In Myanmar language; otherwise known as Tai-Leng in Shan language, or Red Shan.

21 Including Shan, Shan Gyi and Wa.

22 Including Bamar, Chinese, Ghurkha, Indian, Mon, Muslim and "Mixed" (this last category includes Bamar-Kachin, Kachin-Chinese, Kokang-Bamar, Lisu-Chinese, Mon-Kachin, Shan-Bamar, Shan-Chinese and Shan-Kachin).

23 In general, respondents who identified as Christian did not elaborate further on their specific denominations.

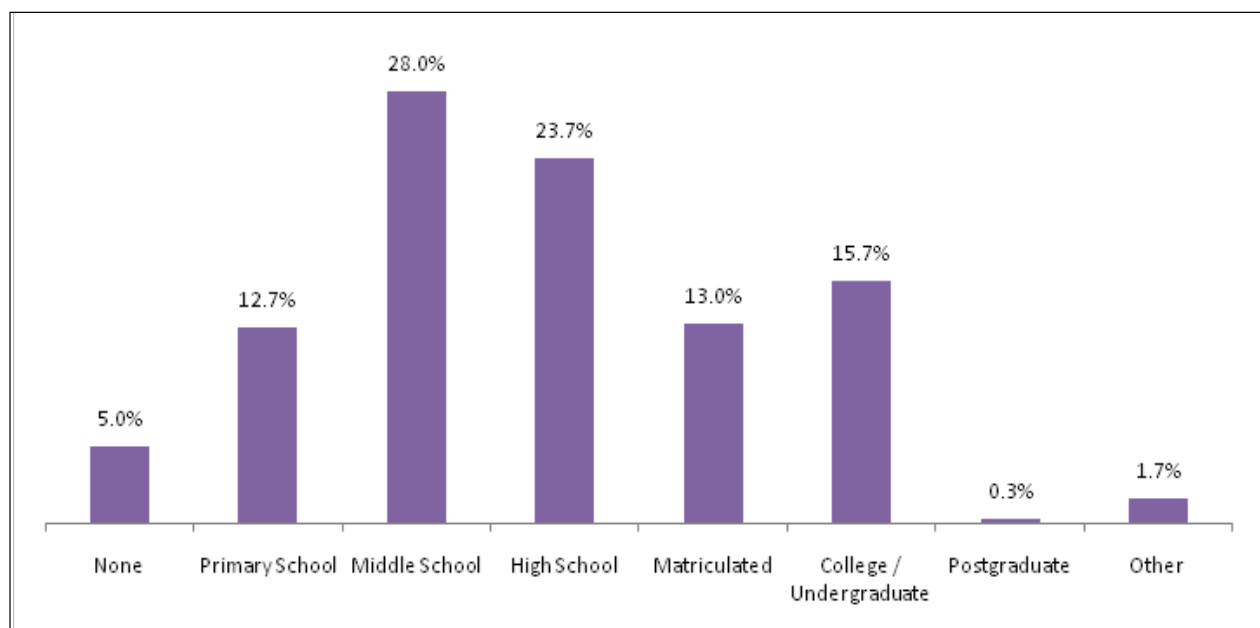
Table 2.3 Respondents by Township and Religion

Ethnicity	Religion			TOTAL
	Buddhist	Christian	Muslim	
Myitkyina	25	55	6	86
Banmaw	18	51	4	73
Putao	2	70	--	72
Moe Nyin	54	15	--	69
TOTAL	99	191	10	300

## Education Levels and Myanmar Language Literacy

For purposes of analysis, respondents' answers regarding their completed levels of education were reclassified into seven categories: None, Primary School<sup>24</sup>, Middle School<sup>25</sup>, High School<sup>26</sup>, Matriculation<sup>27</sup>, College/Undergraduate<sup>28</sup>, Postgraduate<sup>29</sup> and Other<sup>30</sup>. The distribution of respondents across all education levels is presented in Figure 2.1.

Figure 2.1 Levels of Education



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

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

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

27 Defined as having passed grade 11.

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

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

30 Defined to include non-formal education.

The highest proportion (28.0%) of respondents had had some level of middle school education, 5.0% had never had any formal or non-formal education and another 12.7% had had some level of primary education. Almost one quarter (23.7%) of respondents had had some level of high school education and 13.0% had matriculated from high school. A small minority (16.0%) of respondents had received tertiary education, either undergraduate or postgraduate.

Higher proportions of males than females had some level of primary, middle or high school education. However, higher proportions of females than males had matriculated from high

school or had some level of college/undergraduate education (Figure 2.1(a), Annex II).

Among those respondents who had not had any formal or non-formal education, almost half (40%; 6 of 15) were Lisu, and among those who had had some level of primary education, more than one quarter (28.9%; 11 of 38) were Lisu. Among all Lisu respondents, the highest proportion (30.0%; 15 of 50) had had some level of high school education. Among all respondents who had some level of primary education, almost one in five (18.4%; 7 of 38) were Shan Ni or “other Shan”. The highest proportion (28.0%; 7 of 25) of “other Shan” had had some level of primary education (Table 2.4).

Table 2.4 Levels of Education by Ethnicity

Education Level	Ethnicity							TOTAL
	Jinghpaw	Lisu	Rawang	Other Kachin	Shan Ni	Other Shan	Others	
None	1	6	3	0	2	2	1	15
Primary School	3	11	4	2	7	7	4	38
Middle School	16	12	14	10	12	6	14	84
High School	11	15	7	8	5	4	21	71
Matriculated	10	1	11	6	3	1	7	39
College/ Undergraduate	9	3	11	4	6	5	9	47
Postgraduate	0	0	0	0	0	0	1	1
Other	0	2	0	0	0	0	3	5
<b>TOTAL</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>30</b>	<b>35</b>	<b>25</b>	<b>60</b>	<b>300</b>

Respondents stated whether they were able to read a newspaper and write a letter in the Myanmar language. A very large majority (90.3%) of respondents reported that they were able to do both. Only 6.0% of respondents indicated that they were unable to either read or write in the Myanmar language.

Male (91.3%) and female (89.3%) respondents had almost the same levels of Myanmar language literacy (Figure 2.1(b), Annex II).

A lower proportion of Lisu respondents than others reported being literate (by these measures) in the Myanmar language (Figure 2.1(c),

Annex II). Of those respondents who reported being unable to either read or write in the Myanmar language, half (9 of 18) were Lisu and four were Rawang (Figure 2.1(d), Annex II).

### Persons With Disability

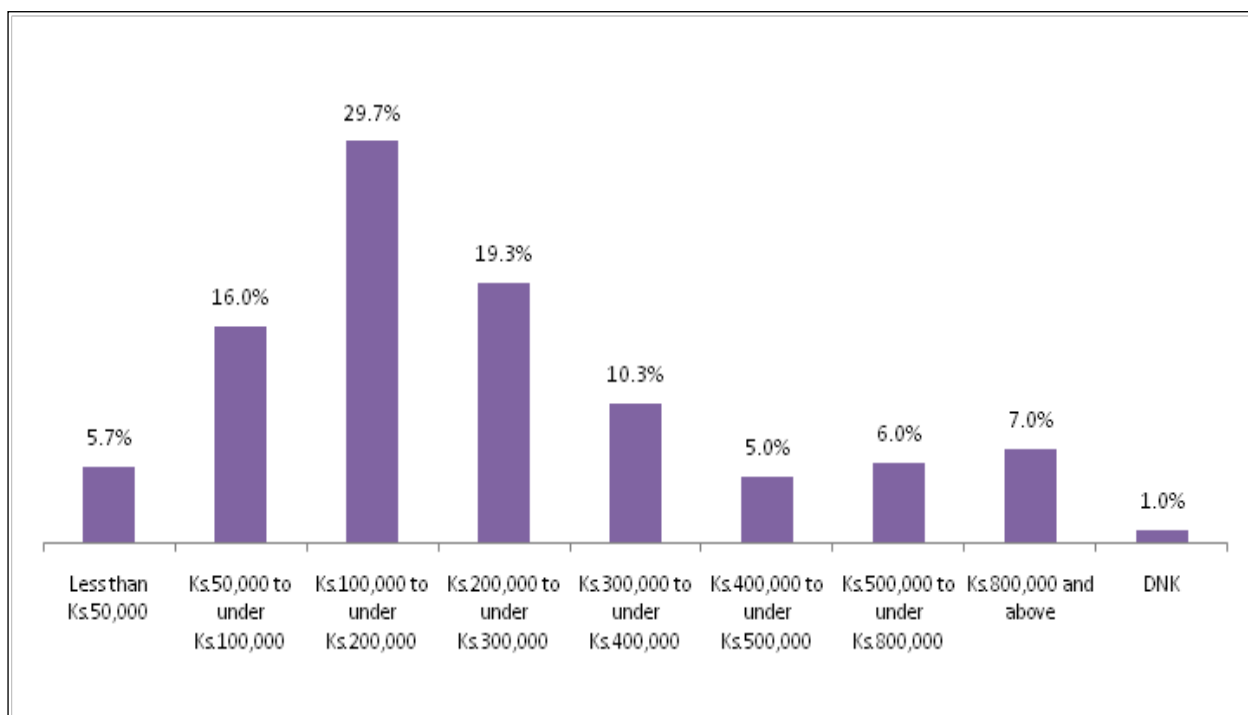
About 1 in 10 (10.7%) non-IDP respondents reported having a person with at least one type

of disability within their household. These included physical, visual, hearing, speech and/or mental disabilities or impairments.

### Household Income and Assets

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

Figure 2.2 Monthly Household Income Level



Approximately half the respondents reported a household income of Ks.200,000 or less per month. More than one in five (21.7%) households had income of less than Ks.100,000 per month, and more than one quarter (29.7%) had between Ks.100,000 and Ks.200,000 per month. A small minority (13.0%) of respondents reported having a total household income of over Ks.500,000 per month.

Lisu respondents constituted the highest proportion (41.2%; 7 of 17) of those who reported the lowest monthly household income level of less than Ks.50,000 per month. Of all Lisu respondents, the highest proportion (36.0%, 18 of 50) reported having a monthly household income of Ks.100,000 to Ks.200,000 (Table 2.5).

Table 2.5 Monthly Household Income Level by Ethnicity

Monthly Household Income Level	Ethnicity							TOTAL
	Jinghpaw	Lisu	Rawang	Other Kachin	Shan Ni	Other Shan	Others	
Less than Ks.50,000	2	7	2	2	2	1	1	17
Ks.50,000 to under Ks.100,000	13	12	10	3	2	2	6	48
Ks.100,000 to under Ks.200,000	13	18	16	6	13	6	17	89
Ks.200,000 to under Ks.300,000	11	6	7	8	6	8	12	58
Ks.300,000 to under Ks.400,000	3	3	6	3	5	2	9	31
Ks.400,000 to under Ks.#500,000	1	1	4	4	0	1	4	15
Ks.500,000 to under Ks.800,000	2	1	4	2	4	0	5	18
Ks.800,000 and above	4	2	1	0	3	5	6	21
Do not know	1	0	0	2	0	0	0	3
<b>TOTAL</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>30</b>	<b>35</b>	<b>25</b>	<b>60</b>	<b>300</b>

The primary sources of household income were agriculture (26.3% of respondents), small businesses involving trading, buying and selling (19.0%) and small businesses involving the provision of services, such as vehicle repairs, post-harvest processing, etc. (11.3%). More than two in five (44.3%) respondents reported not having secondary sources of household income.

Large majorities of respondents reported having a motorcycle/tuktuk (91.2%), mobile phone (85.8%), television set (74.3%) and/or radio (61.8%). One in every four or five respondents reported having a power generator (26.0%), refrigerator (25.0%) and/or bullock cart (20.6%). Four respondents stated that

their households did not own any of the 15 assets listed in the questionnaire. Ownership of television sets, radios and mobile phones, disaggregated by monthly household income level, is presented in Figure 2.2(a) (Annex II).

### Mass Media Exposure and Access to Information

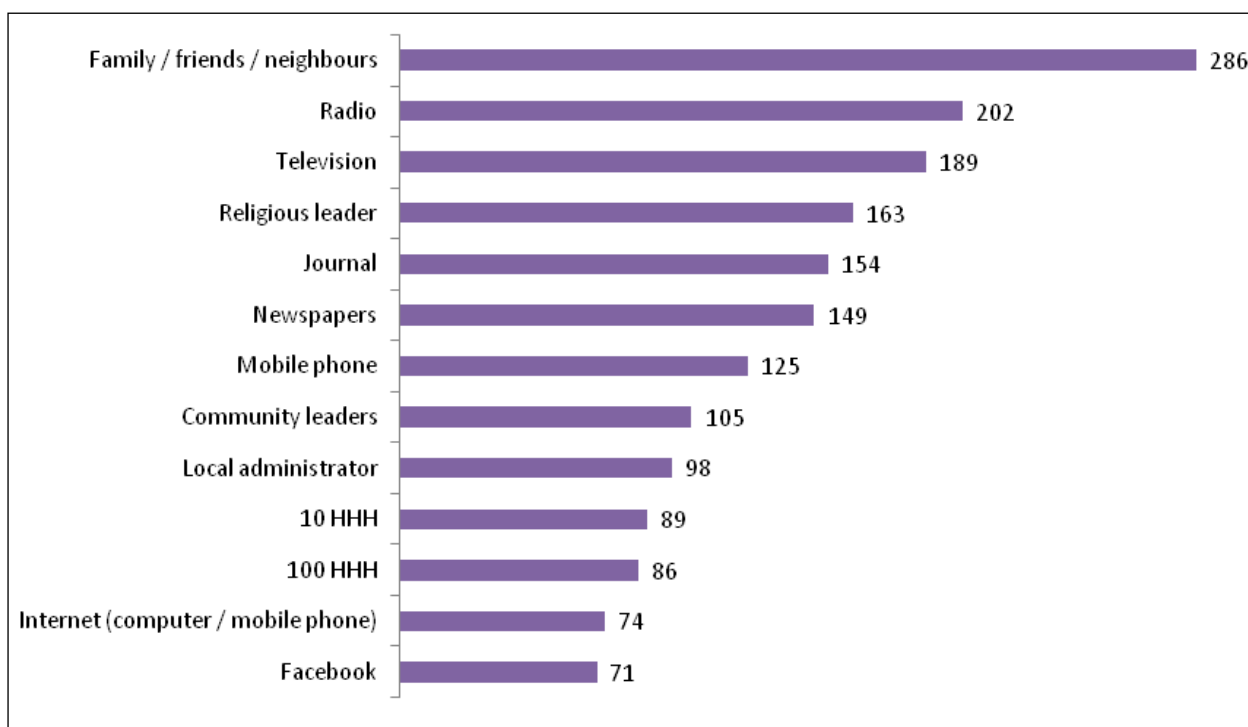
Respondents indicated their exposure to mass media by stating how often per week they watched television, listened to the radio and read newspapers or journals (Figure 2.3). They revealed only moderate levels of engagement with mass media.

Figure 2.3 Mass Media Exposure



Little more than one third of respondents watched television (35.7%) and/or listened to the radio (36.3%) every day or almost every day. Only a small minority (6.7%) read the newspapers or journals every day or almost every day. Conversely, almost one third of respondents (31.3%) never watched television and/or never listened to the radio, and 36% never read newspapers or journals in the course of a week.

Figure 2.3(a) Access to Information



The most common source of information was family/friends/neighbours (96.0% of respondents). The majority also relied on radio (67.8%) and/or television (63.4%). Other important sources of information were religious leaders (54.7%), journals (51.7%), newspapers (50.0%), mobile phones (41.9%), community leaders (35.2%) and local administrators (32.9%).

These results suggest that, for some respondents, those who own radios are important intermediaries for further dissemination of information.

It appears that female and male respondents access information in slightly different ways (Figure 2.3(b), Annex II). For both, the most common way of learning about what is happening in the country was through family/friends/neighbours (96.0%). For females, the next most common sources were radio (63.1%), television (62.4%), journals (54.4%), newspapers (53.0%), religious leaders (49.0%), and mobile phones (43.6%).

However, male respondents appear to rely more on authority figures than do female respondents. For males, after family/friends/neighbours, the next most common sources of information were radio (72.5%), television (64.6%), religious leaders (60.4%), journals (49.0%), newspapers (47.0%), community leaders (43.0%), mobile phones (40.3%) and 10-HHHs, 100-HHHs and local administrators (34.9% each).

Respondents also indicated the main languages in which they received information.<sup>31</sup> A large majority (82.0%) received information in Myanmar. Very small minorities received information primarily in Jinghpaw (7.3% of respondents)<sup>32</sup>, Lisu (4.3%) and Rawang (4.0%). This pattern diverges from the primary languages spoken

in respondents' households<sup>33</sup>: more than one-third (36.3%) of the respondents reported speaking Myanmar at home, around one quarter spoke Jinghpaw (24.4%)<sup>34</sup> and smaller minorities spoke Rawang (16.7%), Lisu (15.3%) and Shan (2.7%) (Figure 2.3(c), Annex II).

Two respondents stated that they did not receive any information about what is happening in the country.

## Access to Services

Unsurprisingly, a large majority (88.3%) of respondents reported that it took them 15 minutes or less to reach their ward and village tract administrators (W/VTAs). A small minority (9.7%) estimated that it took them up to half an hour. In terms of cost, a majority (60.0%) stated that visiting their local administrators was cost free, and about one third (32.7%) indicated that such a visit would cost them Ks.500 or less. About half (55.3%) the respondents stated that, over the course of a year, they had never visited their W/VTA office to seek help and another 41.3% said they had visited it between one and five times.

Typically, it took longer for respondents to visit the police post closest to their home. Nearly two fifths (39.7%) of respondents said that it would take them 15 minutes or less, and another 42.7% stated that it would take up to half an hour. Ten respondents stated that they did not know where the police post nearest to their home was. A small minority (16.7%) of respondents reported that visiting the police post would be cost free, and around one quarter (26.0%) indicated that it would cost them less than Ks.500. A majority (54.0%) of respondents estimated that it would cost them more than Ks.500 to visit the police post closest to their home (Table 2.6, Annex II). A large majority

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

32 This figure includes 4.3% of respondents who reported receiving information in "Kachin" language. Unless stated otherwise, "Kachin" is used in this report as a general umbrella term encompassing the six main clans of Jinghpaw, Lacid/Lashi, Lhaovo/Maru, Lisu, Rawang and Zaiva/Atsi.

33 Via an open-ended question.

34 This figure includes 10.7% of respondents who reported "Kachin" as the main language spoken within their household.

ty (82.3%) of respondents stated that they had never visited the local police post to seek help over the course of a year, although 17.3% indicated that they had visited it between one and five times.

To access the religious leader nearest to their home, a large majority (85.7%) of respondents reported that it would require 15 minutes or less, and another 11.7% estimated that it would take up to half an hour. More than two-thirds (69.0%) indicated that visiting the religious leader nearest their home would be cost free, and about one in five (20.7%) stated that it would cost Ks.500 or less. Almost three quarters (72.3%) of respondents stated that they had never visited their nearest religious leader over the course of a year to seek help. About one in five (21.7%) estimated that they had done so between one and five times.

With respect to services at the township, fewer than one quarter of respondents reported that it would require 15 minutes or less to reach the township GAD (23.7%), the township police (22.3%) or the township court (24.4%). More than one third of respondents estimated that it would take up to half an hour (township GAD: 36.3%; township police: 39.0%; township court: 35.3%). Around 15% to 17% of respondents indicated that it would require between half an hour and an hour to access services at the township (township GAD: 15.7%; township police: 16.7%; township court: 17.0%); 15.3% stated it would require more than an hour to access these services. Small minorities stated that they did not know where the township GAD (9.0%), township police (6.7%) or township court (7.7%) were located. Respondents' estimates of the costs associated with accessing these services are presented in Table 2.6, Annex II. It is worth noting that significant majorities of respondents reported never to have visited the township GAD (89.7%), township police (89.7%) and township court (94.0%) to seek help over the course of a year.

## Main Sources of Support

When they need help, almost half (48.0%) the respondents seek help from their families. Small minorities seek help from friends and colleagues (13.7% of respondents) and neighbours (8.3%). Significantly, more than one quarter (28.0%) of respondents reported that they had no one from whom they could receive assistance. Among those who identified that they had sources of help, a large majority (87.5%; 189 of 216) indicated that those sources were not affiliated to a political party, and a majority (53.2%; 115 of 216) reported that their sources of support were people of relatively higher wealth.

*In summary, study sites across Kachin State were generally demographically heterogeneous, their residents being a relatively diverse mix of people of different ethnicities and religions.*

*Respondents' most common source of information was family/friends/neighbours. In addition to these sources, male respondents tend to rely more on authority figures than do female respondents. It is likely that people who own televisions and radios are important intermediaries in the dissemination of information.*

*More than one quarter (28.0%) of respondents reported that they had no one from whom they could get help when needed.*





Photo: Landscape in Nant Mun Village, Banmaw Township, Kachin State



# CHAPTER 3

## PERCEPTIONS OF JUSTICE AND LAW

Photo: District court in Kaung Kahtawng Ward, Putao Township, Kachin State

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

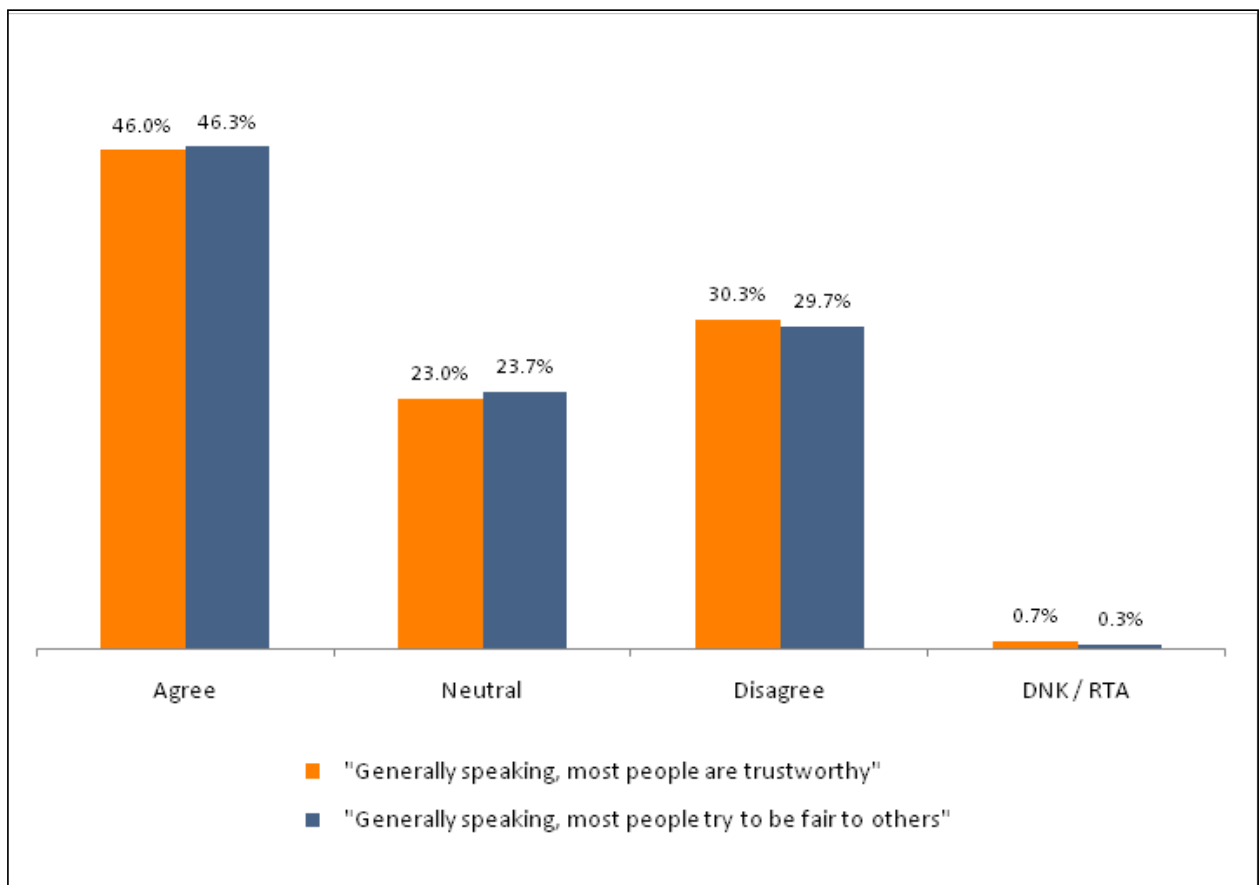
It then examines respondents' perceptions of certain dimensions of justice and law. This provides some context to the study's enquiry into why and how people seek access to justice (as outlined in the following chapters).

This chapter refers only to non-IDP respondents (see Chapter 7 in respect of IDP respondents).

## SOCIAL TRUST

Respondents indicated their perceptions of two characteristics associated with social value: trustworthiness and fairness (Figure 3.1).<sup>35</sup>

Figure 3.1 Social Trust: Trustworthiness and Fairness



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

Less than half the respondents agreed that, “Generally speaking, most people are trustworthy” (46.0%) and that, “Generally speaking, most people try to be fair to others” (46.3%). Around 30% of respondents disagreed with both statements.

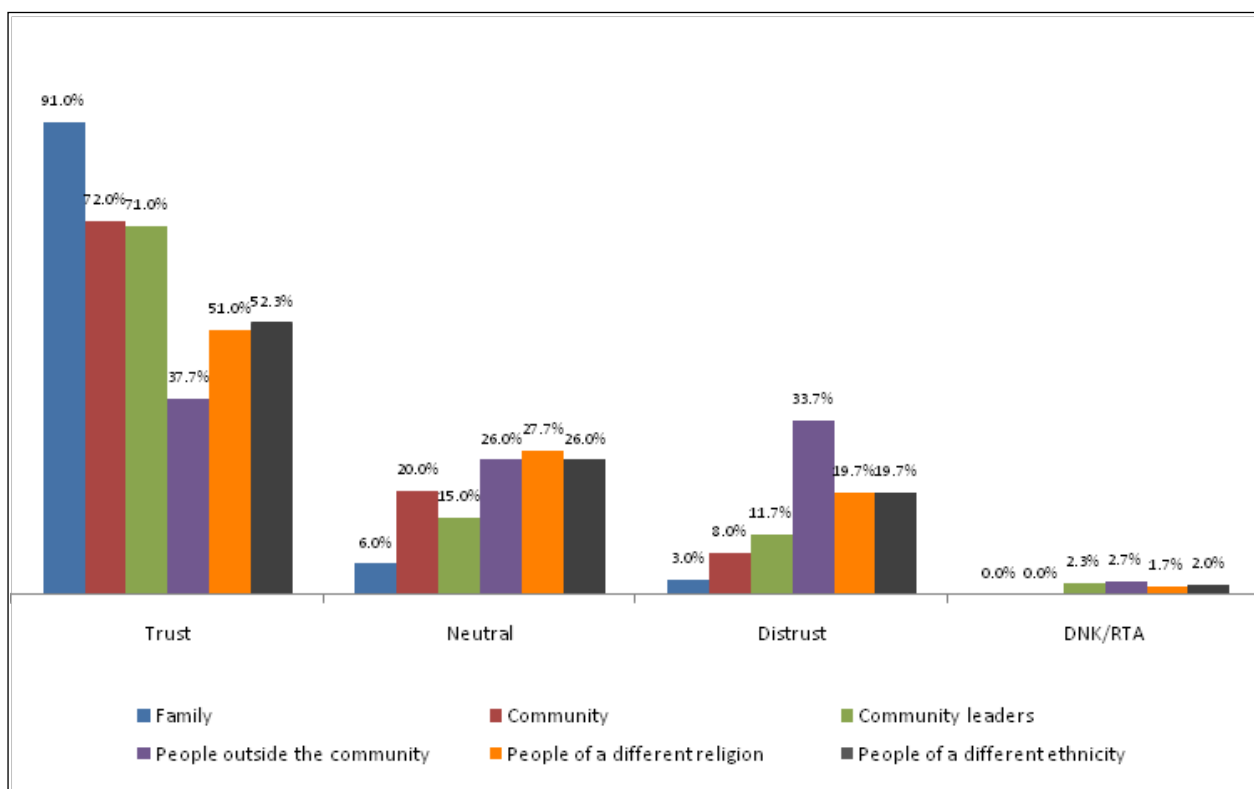
Male respondents tended to show higher levels of belief in these values. A slightly higher proportion of males than females agreed with the two statements, whereas a slightly higher proportion of females than males disagreed with both statements (Figure 3.1(a), Annex II).

Christian respondents appeared to hold firmer views on the trustworthiness and fairness of

others than did Buddhist respondents. Slightly higher proportions of Christian respondents agreed with both statements and significantly higher proportions disagreed. Significantly higher proportions of Buddhist respondents had neutral attitudes towards the two statements (Figure 3.1(b), Annex II).

Respondents also indicated the extent to which they trust or distrust various categories of people: family and relatives; neighbours, friends and people within the community; community leaders; people outside the community; people of a different religion; and people of a different ethnicity<sup>36</sup> (Figure 3.2).

Figure 3.2 Social Trust: Trust in Others



36 Responses were recorded on a seven-point Likert scale: “Agree strongly”; “Agree somewhat”; “Agree a little”; “Neither agree nor disagree”; “Disagree a little”; “Disagree somewhat”; “Disagree strongly”. To simplify analysis, the responses “Agree strongly”, “Agree somewhat” and “Agree a little” are combined as “Agree”, and the responses “Disagree a little”, “Disagree somewhat” and “Disagree strongly” are combined as “Disagree”.

The results demonstrated strong family and community allegiances. Unsurprisingly, family and relatives were the most trusted. People outside the community were the least trusted, by a considerable margin.

Female and Buddhist respondents generally expressed lower levels of trust and higher levels of distrust or neutrality towards all the given categories of people than did male and Christian respondents (Figures 3.2(a) and 3.2(b), Annex II). In summary, males were more likely than females to consider most people generally to be trustworthy and fair. Overall, respondents demonstrated strong allegiance to family and community and tended to distrust “outsiders”.

## PERCEPTIONS OF JUSTICE

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

- formal vs. informal pathways to justice;
- the principle of equality, and the State’s responsibility to protect and defend human rights;
- the right to seek remedy;
- private vs. public authority;
- transitional justice (in a conflict-affected society);
- due process;
- gender equality;
- individual rights in relation to communal harmony and cohesion (Table 3.1).

Table 3.1 Perceptions of Justice

Dimensions of Justice	Statements	Agree*
FORMAL vs. INFORMAL	(a) Some disputes are best settled in the courts.	16.7%
	(b) It is better for most disputes to be settled within the community.	71.7%
EQUALITY	(a) Every person deserves equal care and concern by the government regardless of religion or ethnicity.	90.7%
	(b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups.	7.7%
FATE vs. REMEDY	(a) Injustices can befall people, and there is nothing they can do about it because it is their fate.	7.3%
	(b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome.	89.3%
PRIVATE vs. PUBLIC	(a) Matters within a family are private and internal to it, and a married man has complete authority over his spouse and children.	40.0%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	45.0%
TRANSITIONAL JUSTICE	(a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar.	43.3%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	50.0%
PROCESS vs. OUTCOME	(a) Being fairly treated throughout a process is more important than obtaining a favourable outcome.	97.7%
	(b) Obtaining a favourable outcome is more important than being treated fairly during a process.	2.0%
GENDER	(a) Men and women have equal value, but women have greater responsibility to care about culture and tradition.	2.7%
	(b) Men and women have equal value, and both have equal responsibility to care about culture and tradition.	96.0%
INDIVIDUAL vs. COMMUNITY	(a) Individual rights must be as respected as communal harmony.	70.3%
	(b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised.	26.3%

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

Very high majorities of respondents agreed that procedural fairness is more important than obtaining a favourable outcome (97.7%), that men and women have equal value and equal responsibility for caring about culture and tradition (96.0%), that everyone deserves equal care and concern from the government regardless of religion or ethnicity (90.7%) and that people can seek help from others to obtain a remedy and secure a fair outcome following an injustice (89.3%).

Significant majorities preferred disputes to be settled locally (71.7%)<sup>37</sup> and believed that individual rights must be as respected as communal harmony (70.3%). Half the respondents thought that transitional justice is important in building a new Myanmar.

On the question of private vs. public authority, 45.0% agreed that a community sometimes has the responsibility to intervene in others' household matters, while 40.0% believed that family matters are private and that a married man has complete authority over his family.<sup>38</sup>

The views of female and male respondents were broadly consistent, but they diverged in relation to two dimensions of justice (Table 3.1(a), Annex II). Regarding the private/public dimension, the female respondents tended (49.3%) to agree that a community sometimes has the responsibility in certain circumstances to intervene in others' household matters, whereas the male respondents tended (45.3%) towards the view that matters within the family are private, and that a married man has complete authority over his family. Regarding transitional justice, a majority of female respondents (58.7%) thought that problems in the past must be addressed so as to build a new Myanmar, whereas a smaller

majority of male respondents (53.3%) agreed that problems in the past should not be revisited, and that everyone should focus on building a new Myanmar.

Urban and rural respondents' attitudes also diverged with respect to the private/public dimension of justice and transitional justice (Table 3.1(b), Annex II). Regarding the private/public dimension, urban respondents tended (45.6%) to agree that a married man has complete authority over private and internal family matters, whereas rural respondents tended (48.6%) to agree that a community sometimes has the responsibility to intervene in others' household matters.<sup>39</sup> On the issue of transitional justice, a majority of urban respondents (51.8%) agreed that problems in the past must be addressed so as to build a new Myanmar, whereas rural respondents tended (49.5%) to state that the past should not be revisited and that everyone should focus on building a new Myanmar.

The perceptions of Buddhist and Christian respondents were broadly consistent, except on the topic of transitional justice (Table 3.1(c), Annex II). A majority (56.0%) of the Christian respondents agreed that old problems in the past must be addressed so as to build a new Myanmar, whereas the Buddhist respondents tended (49.5%) to agree that problems in the past should not be revisited.

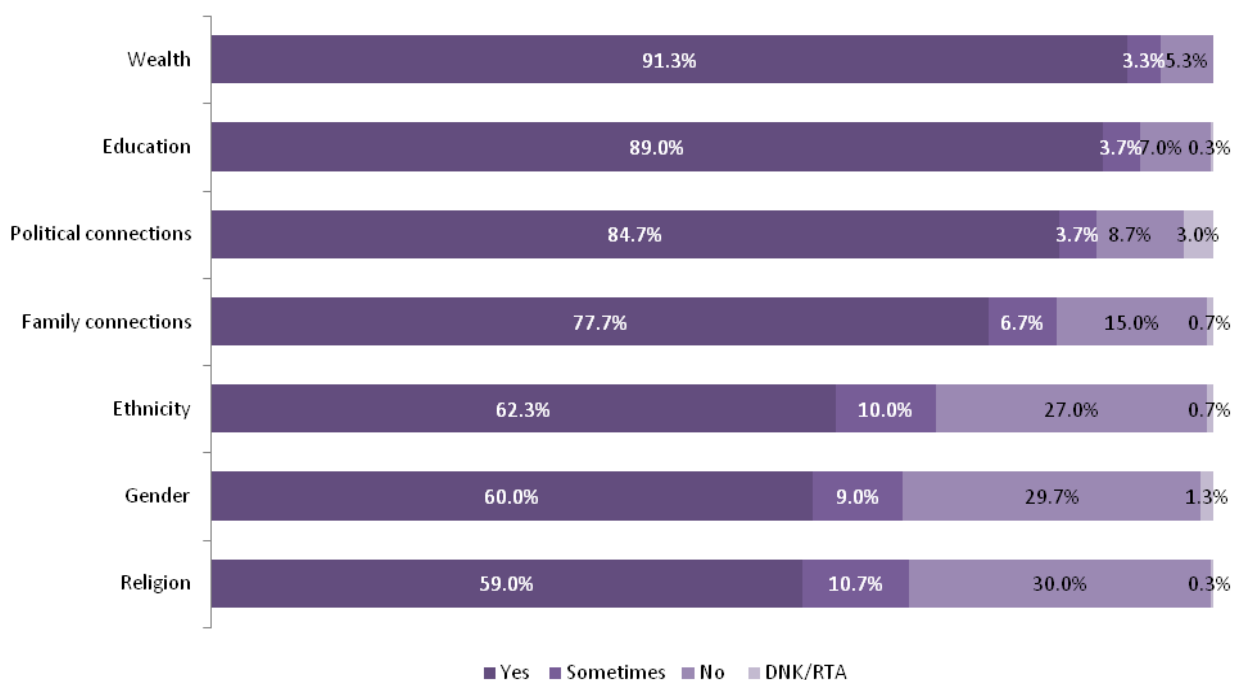
As part of exploring people's perceptions of these dimensions of justice, respondents indicated what they thought about factors that might be considered to determine how well a person is treated in Myanmar society: education, wealth, ethnicity, gender, religion, family connections and political connections (Figure 3.3).

37 About one tenth (9.7%) of respondents agreed with both statements, that "Some disputes are best settled in the courts" and that "It is better for most disputes to be settled within the community".

38 14.3% of respondents agreed with both views.

39 One in 10 urban respondents (10.8%), and one in five rural respondents (21.0%) agreed with both statements on the private/public dimension of justice.

Figure 3.3 Treatment Factors



Respondents overwhelmingly cited wealth (91.3%) and education (89.0%) as factors that determine how well a person is treated in Myanmar society. Large majorities also believed that political connections (84.7%), family connections (77.7%), ethnicity (62.3%), gender (60.0%) and religion (59.0%) determine how well a person is treated.

*In summary, virtually all respondents agreed that procedural fairness is more important than obtaining a favourable outcome to a dispute. A significant majority preferred disputes to be settled locally.*

*Very large majorities agreed that men and women have equal value and equal responsibility for caring about culture and tradition, that everyone deserves equal care and concern by the government regardless of religion or ethnicity and that people are able to seek help and obtain a remedy and fair outcome following an injustice. Urban respondents were more likely than rural respon-*

*ents to favour transitional justice as the basis for building a new Myanmar.*

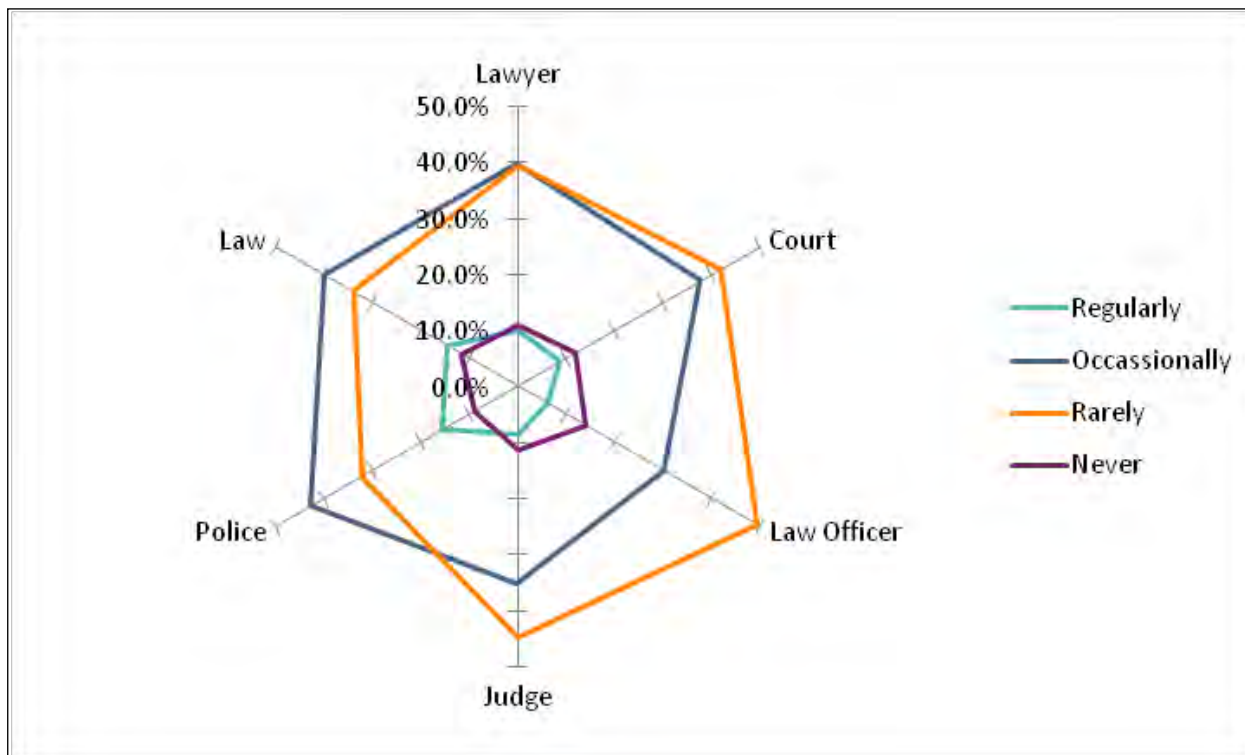
*People overwhelmingly cited wealth and education as the main factors that determine how well a person is treated in society.*

## PERCEPTIONS OF LAW

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



Figure 3.4 Words in Daily Conversation



More than half the respondents reported regular or occasional use of the words “police” (58.4%) and “law” (54.4%) in day-to-day conversation. Majorities of respondents reported that they rarely, or had never, heard or used the words “law officer” (63.3%), “judge” (56.0%), “court” (53.7%) and “lawyer” (51.8%).

it operates in Myanmar. It is important to note that it is not possible on the basis of the results to disentangle respondents’ (presumed) lack of legal knowledge from a lack of implementation of the law.

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

Respondents then indicated their understanding of three propositions regarding particular legal provisions (as expressed in a series of given statements) (Table 3.2). This cast some light on their perceptions of the law and how

Table 3.2 Perceptions of Law

Dimensions of Justice	Statements	Agree*
CHILD LABOUR	(a) In Myanmar, it is illegal for children under 12 years of age to be working in teashops.	29.7%
	(b) In Myanmar, children who are 12 and above can choose and decide to work in teashops.	50.7%
EQUALITY BEFORE THE LAW	(a) In Myanmar, every person has equal rights before the law.	19.0%
	(b) In Myanmar, not all people have equal rights before the law.	78.0%
VIOLENCE AGAINST WOMEN	(a) According to national law, only when a woman has experienced physical violence can she report it to the police.	44.3%
	(b) According to national law, women who receive threats to their safety can also report to the police.	44.7%
LAND RIGHTS	(a) When pursuing a land claim, the strongest claim is an official paper land certificate.	62.0%
	(b) When pursuing a land claim, an official paper land certificate is not regarded as a stronger claim than a community-recognised ancestral land claim.	32.3%

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

On the issue of child labour, just over half (50.7%) the respondents thought that children aged 12 or older can choose and decide to work in teashops. This perception reflects a common phenomenon of children working in teashops that has its causes in poverty across the country. The 1951 Shops and Establishments Act (s. 8) stipulates that “no person who has not attained the age of 13 years shall be required to work in any shop, commercial establishment or establishment for public entertainment”.

Almost four fifths (78.0%) of respondents perceived that not all people have equal rights before the law in Myanmar. In this regard, the 2008 Constitution contains potentially contradictory provisions: on the one hand, the rights of equality, liberty and justice are guaranteed only to citizens (Art. 21(a)), and on the other, equal

rights before the law and equal legal protection are guaranteed to any person in the Union (Art. 347).

In relation to violence against women, respondents were almost evenly split between those who thought that women who receive threats to their safety can report to the police (44.7%),<sup>40</sup> and those who believed that a woman could only do so when she has experienced physical violence (44.3%).

Almost twice as many respondents believed that an official paper land certificate is the strongest piece of ownership documentation to have when pursuing a land claim (62.0%) as believed that a community-recognised ancestral land claim provides an equally strong claim (32.3%).

40 Penal Code, 1861, s. 503.

## Legal Awareness

While state officials generally agreed that legal awareness among the populace was important for promoting the rule of law and access to justice, they also offered some nuanced perspectives. According to one law officer, “local people [lack both] legal knowledge and general knowledge”. Another stated that “there is a lack of interest among people [in legal knowledge] because what they are told does not reflect actual practice”, highlighting the “gap” that exists between provisions of the law and reality.

One township administration officer emphasised that training is needed, not just for local people but also for local administrators and township officials, to “change mind-sets” and in order “to learn [about] fairness and legal procedures”.

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

*Respondents often did not know or misunderstood the law. Nonetheless, almost four fifths perceived that not all people have equal rights before the law in Myanmar. Law officers saw the need to raise public awareness about the law. Respondents’ perceptions appeared to confirm a gap between provisions of the law and reality.*



# CHAPTER 4

## DISPUTES AND CONCERNS ABOUT JUSTICE

Photo: Grape fruits hanging from the ceiling of a vendor's home in Kaung Kahtawng Ward, Putao Township, Kachin State

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

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

This chapter identifies the main disputes and concerns about justice that had arisen at both the individual/household and community levels and describes respondents' involvement in them. It then examines how respondents went about resolving the issues and grievances they identified as being of greatest concern to them, and how successful they were.

This chapter refers only to non-IDP respondents (see Chapter 7 in respect of IDP respondents).

## INDIVIDUAL/HOUSEHOLD LEVEL

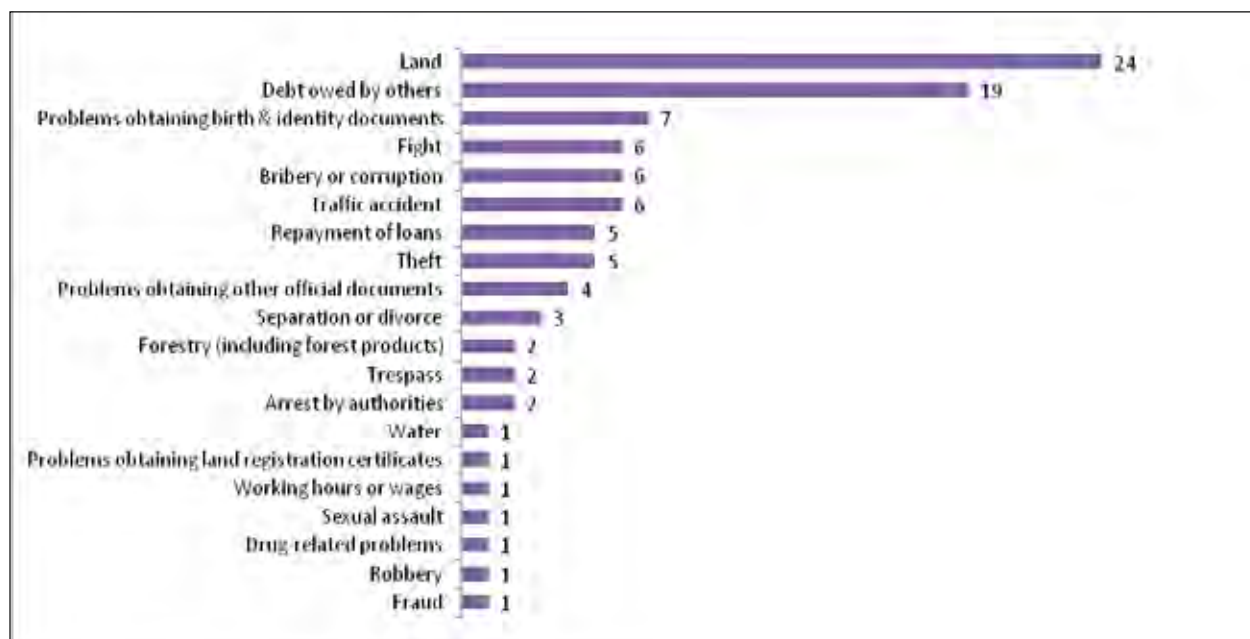
In order to understand the nature of people's concerns about justice, the study first investigated the range and incidence of disputes that had taken place (or were on-going) in the local area over the preceding 12 months.

### Types of Disputes

One quarter (76) of the 300 respondents stated that their household had experienced at least one dispute in the course of the previous 12 months. These disputes related to a wide range of matters, and included all types of dispute on a given list<sup>41</sup>, plus others.

The most common type of dispute related to land (reported by 24 respondents). Also common were disputes over debts owed by others (19). Among other concerns were problems obtaining birth and identity documents (7), fights, bribery or corruption and traffic accidents (6 each), disputes over loan repayment and theft (5 each) and problems obtaining other official documents (4) (Figure 4.1).

Figure 4.1 Types of Disputes

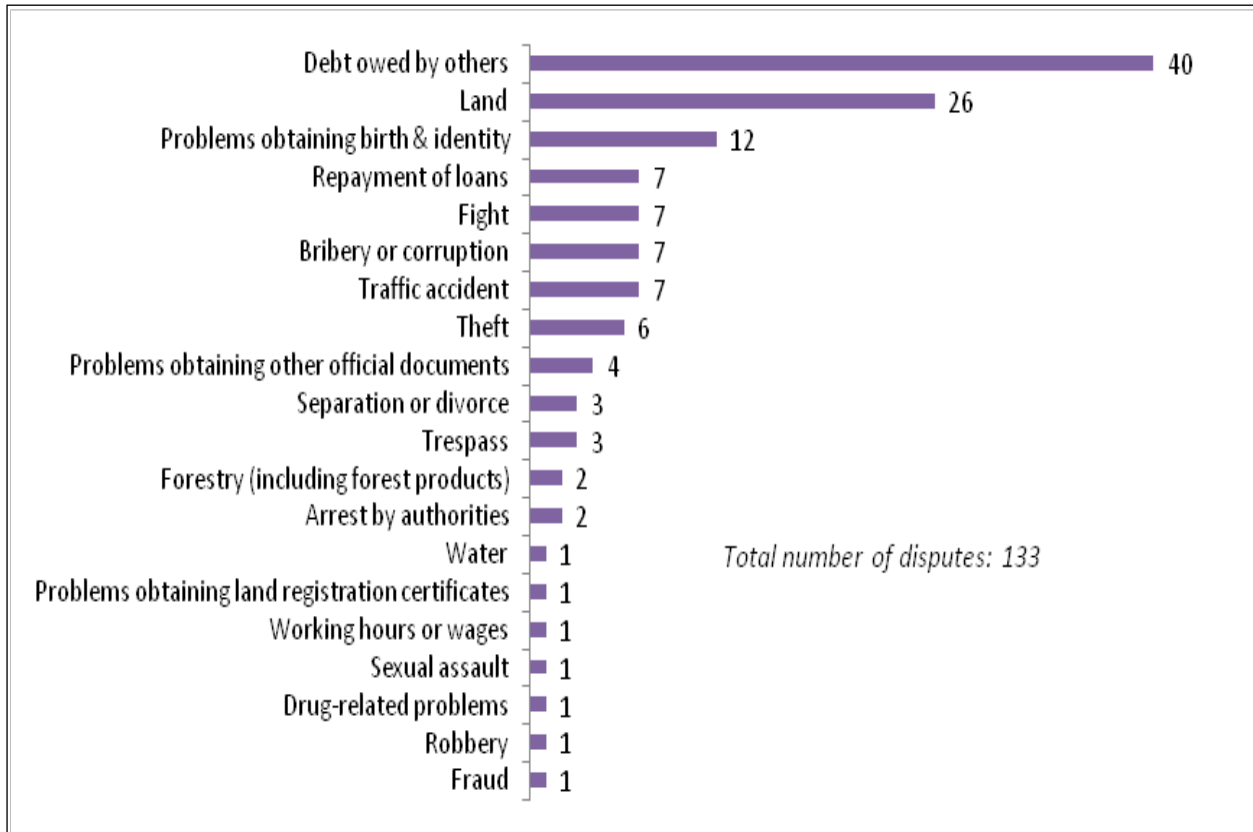


41 Natural resources: land, water, forestry (including forest products), fishing rights; Administrative issues: problems obtaining birth and identity documentation, land registration certificate, other official documents; Family disputes: separation or divorce, child guardianship, inheritance, domestic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

## Incidence of Disputes

These 76 respondents reported having been involved in 133 disputes (Figure 4.2).

Figure 4.2 Incidence of Disputes



Disputes over debts owed by others occurred considerably more frequently than any other types of dispute, accounting for 30.1% (40 of 133) of all disputes reported. Less frequent were land-related disputes (19.5%; 26 disputes), problems obtaining birth and identity documentation (9.0%; 12 disputes), disputes over loan repayment, fights, disputes relating to bribery or corruption, and traffic accidents (7 disputes each), and theft (6 disputes). There were 112 of these most common disputes.

In the majority of these most common disputes (69 of 112), respondents experienced financial loss. There were also 16 instances of property damage and 10 cases of physical injury. Disputes relating to bribery or corruption and problems obtaining birth and identity docu-

mentation were exclusively with officials who exercise some form of state function or have a role in the provision of public services. Disputes related to debts, loan repayments, fights and theft appear to be in the nature of private disputes. Respondents implicated both state and private actors in land-related disputes and traffic accidents.

In 36 of the 40 disputes over debts owed by others, respondents identified other individuals, from either their own communities or other communities, as the opposite party. They also cited groups from other communities as the opposite party.

The majority (20 of 26) of land-related disputes reported appear to be in the nature of private

disputes primarily involving other individuals from either the respondents' own communities or other communities, family members or groups outside the community. In a few cases, companies/businesses, the state government, the township Land Records Office, the local administration and the army were identified as opposite parties.

In 7 of the 12 disputes over problems obtaining birth and identity documentation, respondents identified the township Immigration Department as the opposite party. Other disputing parties included the local administration and a mid-wife/birth attendant/nurse.

Fights, problems over loan repayment and traffic accidents largely appear to be in the nature of private disputes involving family members and individuals or groups from either respondents' own communities or other communities. In one traffic accident case, the respondent identified the army as the opposite party to the

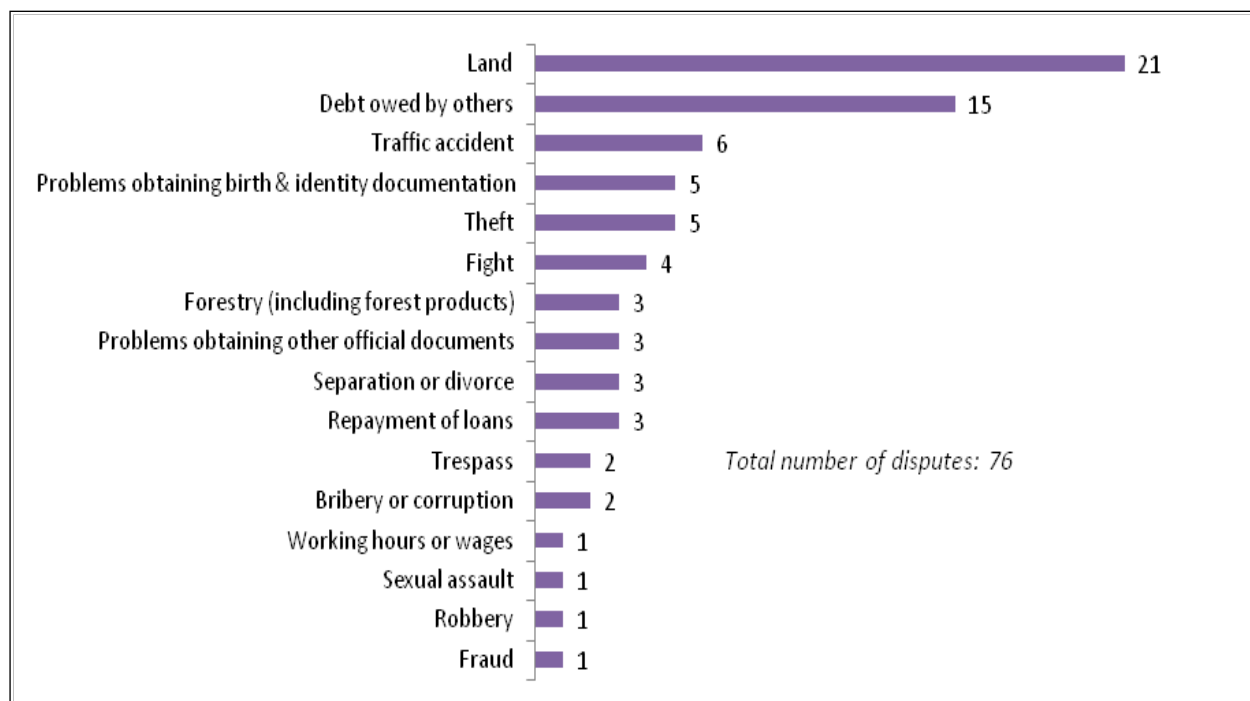
dispute. With respect to bribery or corruption, respondents identified the township Land Records Office, the township Immigration Office, the township GAD, the state police and the army as opposite parties.

Where respondents were able to identify those responsible for theft, they were individuals from either respondents' own communities or other communities.

### Priority Concerns About Justice

The 76 respondents who had been involved in a dispute during the previous 12 months indicated which they considered to be the most important (Figure 4.3).<sup>42</sup> This information was used to track the settlement trajectories of the disputes causing the greatest concern (Figure 5.1). Disputes related to land and debts owed by others were clearly considered the most important.

Figure 4.3 Priority Concerns About Justice



<sup>42</sup> For the 47 respondents who identified only one dispute experienced over the previous 12 months, the single dispute was recorded as the most important problem.

In summary, one quarter of respondents had been involved in at least one dispute in the course of the year. The most common disputes, and those of greatest concern, related to land and to debts owed by others.

Disputes over debts owed by others occurred significantly more often than any other type of dispute, and mostly occurred between individuals. It appears that non-payment of debt is prevalent but likely to be underreported. Land-related disputes also tended to be between individuals.

## THEMATIC ISSUES

This section examines a number of thematic issues that were apparent in Kachin during the course of the study: (i) land-related disputes; (ii) drugs and drug-related problems; (iii) issues arising from the political economy of conflict and resource extraction; (iv) civil disputes, such as over loans and debts, and traffic accidents; (v) sexual and gender-based violence; and (vi) difficulties obtaining civil documentation. These issues have a strong association with disputes that were identified in the preceding section. Some of them – such as land-related disputes, drug-related problems and issues arising from the political economy of conflict and resource extraction – may be regarded as being sufficiently significant, from the perspective of respondents, to have become a community issue or problem rather than isolated incidents that affected only individuals and/or households.

### Land

Land disputes and land-related issues were reported across all study sites. The majority of these, raised by respondents and community leaders alike, were private ownership and boundary disputes between individuals.<sup>43</sup>

An important factor driving the increasing number of disputes is the rising price of land. A community leader in Moe Nyin stated that a plot of land in his area is now worth 20 times what it was worth a year and a half ago. As the value of land has increased, community members have become more concerned to assert ownership and fence off land. Since many did not previously register their land and do not hold official title, this has resulted in disputes over property boundaries. The issue of uneven registration has also resulted in overlapping and competing land claims, for instance where some people possess official registration whereas others assert ancestral rights (Box 1).

The non-transparent redistribution of land previously seized by the military also appears to be a driver of land disputes (Box 1).

#### Box 1

Between 1989 and 1990, a plot of land was seized by the military. Six Lisu families who held land ownership documents from the socialist era had been living on this plot of land since 1969.

In 2013, pursuant to a decree to return land to the “original owners”, the land was returned by the military to another family who asserted ancestral rights. Through what was suspected to be deception, that family initiated application for sole ownership of the land.

The six Lisu families discovered this and reported the issue to the township Land Management Committee, the Municipal Department, the Northern Command and the Union-level Land Management Committee, along with their land ownership documents. No decision has yet been reached in relation to the dispute.

<sup>43</sup> The State is the ultimate owner of all land in Myanmar (2008 Constitution, Art. 37(a)). In general, however, respondents spoke interchangeably about land ownership and land use rights.



Respondents reported that private land disputes were settled through socially acceptable pathways, through ad hoc committees of local community members, or through mediation by third party actors such as local administrators, areas-in-charge or land management committee member sat village tract level (Chapter 5). Local community knowledge of historical use and ownership of the land, as well as official documentation (e.g., land registration certificates) were taken into consideration as part of the dispute settlement process.

A few cases that came to light during the study involved companies buying or leasing land used by communities. As these types of disputes involved outside actors and government departments, they could not be settled locally through socially acceptable pathways. Respondents described attempting to seek help from various government bodies, although with little success (Boxes 2 and 3).

### Box 2

In 2009, approximately 200 residents of one community applied to the Forestry Department to register a community forest. They were issued Forms 105 and 106 by the township Land Records Department, permitting use of that forest land.

In 2014, without notice given to the community, a large company began constructing a hydropower plant, which encroached on some of the community forest. The community forest committee reported the company's actions to the township GAD, but no action was taken.

In 2015, the community forest committee sent a letter of complaint to the State Parliament, requesting that the land taken by the company be reduced and that compensation be awarded to the community for the land taken.

The State Parliament redirected the complaint back to the township GAD. When a newspaper reported the case, the company held a press conference, stating that it was not grabbing land but was simply implementing

a government project, and requested that the community forest group apologise.

When their circumstances did not change, the community forest committee again approached the township and district GAD, as well as the Forestry Department at the township level. They were told that the case could not be handled by township-level authorities because the hydropower project had higher level permission, and that they should report the case to a hydropower project office in another township.

### Box 3

More than 15 years ago, a few families settled on a plot of land beside a road entering their village. The families cleared the trees and set up small shops and auto-repair workshops.

These households were instructed by the township Land Records Department and the Forest Department to move elsewhere as the land belonged to the Ministry of Forestry. The residents (including one man who claimed part of the area as ancestral land), however, continued to live and work there.

In 2015, a mining company was granted use of the land to build warehouses on it. When the company began to break ground for construction, the residents living on the land protested.

The company reported the issue to the Land Records Department and the Forestry Department, and officials from the two departments helped to negotiate a settlement whereby the company would pay each affected family Ks.500,000.

Three of the eight families were unhappy with the low level of compensation and refused to leave. A man from one of these families presented papers to the Forestry Department that showed the disputed land to be public property of the village. He claimed to have paid the village for that land, but did not have proof of that transaction. The three families continued to live on the disputed land while awaiting a final decision.

## Drugs

In all except one of the study sites across Kachin State, respondents identified drugs and drug-related issues as priority concerns. They complained about the prevalence of drugs in their communities and described dealers openly selling on the streets. In one study site they estimated that 80% of households contained at least one drug user. Widespread drug use and addiction resulted in a wide range of negative health, social and economic consequences. Women and children in particular suffer when the family breadwinners become addicted and lose their jobs.

## Perceived Causes and Responses

In Moe Nyin Township, respondents described how the increase in jade mining in nearby Hpakant has contributed to an increase in drug use and addiction in their communities. Many local people were drawn to work in the jade mines because they could earn more money doing so than by farming. According to respondents, many mining companies gave their workers amphetamines and other narcotic drugs in order to keep them addicted and loyal to their companies. Some companies allegedly paid part of workers' salaries in drugs. Respondents also reported that companies would dismiss workers when their addiction affected their work.

According to respondents, the drug trade was due to ineffectual and corrupt policing. Across research sites, they asserted that it was impossible for the police to not know who was engaged in the business, as villagers themselves knew the identities and whereabouts of the dealers. They alleged that the drug trade was able to flourish because government officials, up to ministerial level, were complicit, thus protecting rich businessmen and big dealers from prosecution and keeping trade routes open.

Several respondents cited an old folk tale to

describe the perceived lack of government responsibility:

“From where does the golden deer flee? It is from the king's own gateway that the deer flees. (ရွှေသမင်ဘယ်ကထွက်မင်းကြီးတာကထွက်) shwethamin behgahtweq, mingyitaagahtweq).”

The tale describes a king who wanted to hunt a golden deer in his forest, but it had somehow escaped. The king demanded an investigation and it was discovered that the deer had escaped through the king's own gate – his own men had let the deer out.

One respondent recounted an incident in which a businessman from his village was arrested and given a very lengthy prison sentence for engagement in the drug trade. After just six months, however, the businessman returned to his village. The respondent asserted that the businessman's younger brother had driven to Yangon with five vans full of money and negotiated the release of the businessman. In another study site, respondents reported that large dealers in their area were never caught because the police from Naypyidaw would give advance notice to the village administrator before an upcoming raid. The information was passed on to the dealers, who were able to avoid being apprehended.

Respondents also noted that police action focused on addressing the symptoms rather than the root causes of the problem. One respondent summed up the situation as follows:

“The problem can never be solved unless the main trunk is eliminated. Now, they only clear the branches by arresting only the users and the small dealers.”

In one study site, respondents explained that arrests of users and small dealers provided ample opportunity for the authorities to collect “fines”. Respondents described a recent situation in which several drug users from their vil-

lage were arrested and detained at the police station. The families were summoned to the station and each asked to pay Ks.150,000 to secure the release of their relative; those whose families paid the “fine” were immediately released, and those whose families did not were eventually sentenced to imprisonment by the township court. In a different study site, one respondent reported that this practice also occurred in his community: “If the amount of drugs is small, the local police will usually release him after a ‘fine’ is paid.” Respondents also referred to a nearby village with a thriving drug trade as “the pasture of the police.”

Respondents reported that corrupt and unaccountable policing practices have also had impacts on those not involved with drugs (Box 4). Some described special police operations in which either roadblocks were set up or raids were conducted. Those detained during these exercises were given urine tests, which would be used as evidence in trial. Respondents stated that the urine test was how the police and judges did business: “If the person cannot pay, even water from the Ayeyarwaddy (river) will test positive.”

#### Box 4

A man gave another man from his village a ride on his motorbike. At the entrance of their village, the police stopped the two men and found drugs on the passenger. Although the passenger explained that the drugs belonged to him, and that the driver did not have anything to do with them, both men were arrested and detained at the police station.

Several villagers met with the police and testified that the motorbike owner was not a drug user, but he was not released by the police. While the man was detained, a urine sample was taken.

During trial, the motorbike owner was approached by a case broker who told him that he could secure a favourable outcome if he paid Ks.1.5 million to the police and the judge. The man could not afford to pay the amount and was sentenced to one and a half years in prison.

## Impact of Drugs

At the most basic level, drug use directly affects the health of users. In one study site, respondents stated that 15 to 20 men in their village die every year as a result of drug use, leaving many families without husbands and fathers.

Respondents also reported that drug addiction has had a profound social and economic impact on families. Women respondents stated that domestic violence increased when the husbands used drugs, leading to higher rates of divorce and the break-up of families (Box 5).

When an addict could no longer work, their family lost a source of income. Exacerbating the situation, many families went into debt because the addicted family member would steal from their family or use all the family income to purchase drugs. Family members would also sell land or valuables to repay debts incurred by the drug user. It was commonly said that “You will be sure to become penniless if you have a drug user in your family”.

#### Box 5

A married man left his farms to work for a jade mining company in Hpakant. With the income that he earned he was able to buy a new house and a motorbike.

Soon, however, he became addicted to drugs, which he received as payment from the company that he worked for. When he returned to his village, he spent all his savings on opium instead of giving it to his wife for household expenses.

The man’s addiction was so severe that no company would hire him, and he could not earn any more money. He took money from his wife to sustain his drug use and hit her whenever she refused. When the savings ran out, he sold his wife’s jewels and ornaments.

The couple had to sell their house and move into a much smaller one. Eventually, the man’s wife left him

and moved back in with her parents. The man's drug habit continued and his relatives could not help him. One day, the man died from an overdose.

Children are particularly vulnerable to the consequences of drug use within the family and community. There were reports of children having to leave school as a consequence of their parents' drug habits and the State's policy of targeting users (Box 6). In some areas, children have become targets of the drug trade: sellers operate near schools and provide free samples to children in order to get them addicted so as to create a new market. Some respondents reported that addiction has led to many middle school children dropping out of school and turning to petty theft and burglary.

#### Box 6

The police searched the home of a known drug user and found narcotics. The man and his wife were sentenced to two years in prison, and their four children were forced to drop out of school.

In order to earn money, the eldest child went to work as a "hand picker" (ရေမဆေးကျော့တံရှာသူများ: yae ma hsaekyaukshathumya) searching for scrap pieces of jade in the tailings dumped by mining companies. The other children had to work at a restaurant run by a neighbour in the village.

Respondents uniformly described increased neighbourhood crime and general insecurity within their communities due to the prevalence of drugs and addiction. The many addicts, having lost their jobs, turn to committing theft or burglary in order to get money to feed

their habit. Respondents reported businesses robbed, houses broken into and items such as bags of rice, television sets and motorbikes stolen. They stated that drug addicts would steal from their parents.

Respondents described being forced to cope with rising crime and insecurity in various ways. In Moe Nyin, one lamented the effect of increased crime on his neighbourhood:

"In the past, most of the house compounds here did not have doors. But now, house owners have to install high doors and fences. Drug addicts stealthily enter unguarded houses and steal bags of rice whenever they can. Now, I feel as if I were in a cell."

In one study site in Myitkyina, residents said they now avoid using a certain road after 7pm as several members of their community were robbed by gangs of young drug addicts who gather by the road (Box 7).

#### Box 7

Two men were returning home to their village when young men wielding metal rods attacked them and knocked them off their motorbike.

The two men were immediately surrounded by a large group of young drug addicts, who demanded all their money. The two men gave them all their cash, approximately Ks.30,000. The gang also beat the men and took their motorbike, so they had to walk back to their village.

When the men finally arrived at their village, a local leader and several members of the fire brigade went back to the road to try and retrieve the motorbike. However, they reported that the gang had increased to over 100 people, and they were unable to take back possession of the motorbike.

Respondents reported that there was no one from whom they could seek effective help to address drug-related problems. The efforts of local community leaders such as pastors, thin htauk (lay Christian leaders), youth group leaders, 10-HHs and areas-in-charge were limited to warning or lecturing drug users to stop using. Some communities organised local activities to cope with the drug problem. In one study site, it was reported that members of Pat Jasan, a Christian church-affiliated movement active in Kachin State, participated in activities such as going house to house to preach and pray for drug addicts, caring for drug users by bringing them medicine and food, persuading people to sign *khan wun* (a type of contract binding them not to repeat an activity) when they are found with drugs and participating in anti-narcotics activities with the police. The township anti-narcotics group in Putao also participates in checking for drugs and making arrests; the chairman of the group reported that the police are now able to make 30 to 40 arrests per year with the group's involvement, up from four to five before their activities began.

## Political Economy of Conflict and Resource Extraction

In a few study sites, respondents had a number of concerns arising from armed conflict between the Tatmadaw and the Kachin Independence Army (KIA). Other concerns arose in relation to natural resource extraction.

### ***Perspectives on the Armed Conflict***

A few community elders and leaders spoke emotively about the armed conflict. It should be noted that the views reported below are not representative but indicative of a range of perspectives.

A thin htauk (lay Christian leader) emphasised

that inequality is a fundamental reason for conflict:

“If there is no equality and fairness, we have to bear arms and fight for it. ... I like the rhetoric of Daw Aung San Suu Kyi that it is time for change. What we want is a federal system. If we do not have a federal union, the war will continue. In the past, we governed ourselves with our Duwa. We started hand in hand with the Bamar, together with General Aung San at the Panglong Conference with everyone's agreement. It is not that we do not like the Bamar. We want to be entitled to make a living from the resources in our territory, but the Constitution only gives the right to cooking salt. What we want, as General Aung San said, is if the Bamar get Ks.1, the Kachin will get Ks.1. Min Aung Hlaing said that there is only one Tatmadaw. Yes, that is true, but it should be a Union Tatmadaw, in which ethnic peoples will get equal opportunities. So far, ethnic people will not be elevated [above] the rank of Major. Even for a Bamar, if he marries a Kachin woman and converts to Christianity, he will not get promoted.”

One Shan Ni elder echoed the view that, although “the KIA initially worked for the Kachin interest, their stance is now oriented towards democracy and federal equality”. Another Shan Ni elder, however, stated that:

“... the KIA is not working for the whole population. The Shan Ni also want to advance their own ethnic cause. ... [It should be] Ks.1 for the Bamar, Ks.1 for the Kachin and Ks.1 for the Shan Ni. And if we say federal, there should be equality for all.”

Shan elders explained the role of the Shan Ni militia in the conflict between the Tatmadaw and the KIA. Following the formation of the KIA in the 1960s, the Tatmadaw organised and armed the Shan Ni militia as Tatmadaw soldiers

were unfamiliar with the areas in the north. As a result, both the KIA and Shan Ni militia were mutually engaged in killings and burned each other's communities. When the Shan Ni militia grew in strength, it also started fighting the government. Eventually, the Tatmadaw managed to take back the weapons it had given to the Shan Ni militia.

One Shan Ni elder expressed concerns over the recent resumption of fighting:

"The militia is given training from time to time by the Tatmadaw. If a peace agreement is not reached with the KIA, the Tatmadaw will re-equip the militia. ... If the Shan Ni [militia] is re-equipped with weapons, they will confront the KIA. We are ethnic people. It is not good fighting each other."

### ***Impact of the Conflict***

Armed conflict has evidently had significant negative impacts on people's lives. Respondents in a study site situated en route to jade mines similarly reported feeling afraid of both the Tatmadaw and the KIA, who had divided up control of the areas surrounding their village. Respondents felt a lack of security and protection, and an absence of accountability for problems they encountered in an environment where neither side seemed willing and/or able to exert responsibility (Box 9). In addition, villagers faced controls over their movement:

"It will be very good if we have peace. As [there is the Tatmadaw and also the KIA], we fear both sides and lose our freedom of movement. When they fight, it is the miners who suffer the most. It is good [for the Tatmadaw and the KIA] to cooperate after there is peace. ... When there were armed clashes in Tanai, the KIA ordered us to run to the hill, and the Tatmadaw took porters. Now, we are salt between split beans. ... If the Tatmadaw [wants to] govern, then govern. Or if the KIA governs by itself, then let the KIA govern. We

can be brothers with the KIA; we can even play chin lone with the KIA.

#### **Box 9**

In January 2016, a man who had lived in his village for many years was travelling with a friend to a jade area when he was taken by three armed persons, whom his family and friends believed to be from the KIA.

The man's friend returned to the village and informed the man's family of what had happened. When the man's family did not hear from him for several days, they reported his disappearance to the local administrator, the police station and the township government department of which the man was a staff member.

The police, administrator, government department officials and a colonel from the Tatmadaw interviewed the missing man's friends and family several times, but his family never received any information about his whereabouts.

Respondents who were acquainted with the man felt that the authorities did not care sufficiently to find him. They believed that the case could easily have been resolved if Tatmadaw officials communicated with KIA officials about a misunderstanding in relation to the missing man, and explained that he was a government department staff member.

The missing man's friends conducted their own investigation and discovered the name of one of those who had taken him. They expressed frustration at not knowing who or where to report the information in order to obtain help, "If someone is lost in this way, we are hopeless. We don't really know who to complain to. Nobody takes care of the lost."

Many respondents' narratives were clearly inflected by the ethnic dimension of the conflict. Respondents from the same study site also expressed frustration and resentment at differ-

ential treatment applied on the basis of ethnic identity, which was exacerbated by armed conflict. One Kachin respondent stated:

“We are Kachin people, but [the Shan and Bamar] think that we are insurgents. The KIA could not defend us. The people always lose, but the Kachin suffer the most. The Bamar suffer less because they are the same ethnicity [as the Tatmadaw].”

In a third study site, respondents described how armed conflict affected their lives, and how they tried to avoid potential problems. In that area, where Kachin and Shan people lived together, a Shan person was always selected to be the local administrator as the residents were afraid that a Kachin administrator would become sympathetic to the KIA, which would then come to the village and “give troubles”. Respondents explained that KIA troops would sometimes “come and take” (လာခေါ်သွားတယ် : laakawthwadeh)<sup>44</sup> Kachin people to work as nurses or school teachers (if female) or for military service (if male). The villagers were sometimes able to take measures to bring back those who were taken away (Box 10). In other cases, persons who were taken away adapted to their new situation, even occasionally coming back to visit the village.

### Box 10

A young Kachin woman was taken away (လာခေါ်သွားတယ်: laakawthwadeh) to serve as a teacher to KIA soldiers.

The woman’s mother informed the local administrator, who suggested that she seek help from a former local administrator, a Shan man who had good relations with the KIA.

Over a decade ago, the former local administrator had been arrested for associating with the KIA, and was sentenced to two years of hard labour. The fields

where he served his sentence happened to be near the KIA headquarters in Mai Ja Yang, so he was able to become acquainted with them in the course of his two-year sentence.

When the mother of the young woman who was taken away approached the former local administrator for help, he called Mai Ja Yang to inquire about her condition. The next day, he and the mother met with the officers and explained that the mother had AIDS and needed her daughter to take care of her. They requested that the young woman be released, and she was freed the next day.

## Civil Disputes

Respondents said they frequently faced debt-related disputes with other members of their community. These disputes arose over difficulties in both repaying debts and collecting loan repayments. In one village, most lending and borrowing happened informally, without a formal contract signed in front of a government official. Respondents preferred to borrow from neighbours and other community members, rather than from an official moneylender or pawnshop. This was because pawnshops required an expensive guarantee, such as gold or a house certificate, and they only allowed borrowers to borrow 20% to 25% of the value of the pawned item. Therefore, most loans were considered “unofficial” and respondents stated that they rarely sought help from the police or their local administrator to have them repaid. Instead, they preferred to settle debt-related cases through negotiations, with the help of relatives or elders.

Traffic accidents were reported in nearly all study sites. Traffic accidents resulting in death or injury were usually settled through direct negotiations or with the assistance of third parties such as local administrators or leaders

44 Respondents’ choice of language, “come and take” (လာခေါ်သွားတယ်: laakawthwadeh), would appear to convey the meaning of “conscript”.

in charge of a section of the ward. One case was reportedly settled through a culture and literature association (CLA). In one study site, most people did not report traffic accidents to the police or the local administrator because both parties would have to pay bribes and the case would take a long time to process. Most people also wished to avoid going through the court system. A community leader from another study site explained that going to the police made it much more difficult to get compensation and would also result in someone being imprisoned.

## Sexual and Gender-based Violence

Although respondents did not identify sexual and gender-based violence (SGBV) as a priority concern for their communities, cases emerged through private interviews in all the study sites. The main types of SGBV reported were: (i) domestic violence in the context of marriage, (ii) sexual assault and (iii) sexual exploitation and abandonment.

### ***Domestic Violence in Marriage***

Numerous cases came to light of women suffering from sexual and physical violence within their marriages who were unable to access help and had difficulty ensuring their own safety. A primary reason for these women lacking access to justice is that social norms treat domestic violence as a “dispute between couples” to be “mediated”.

Relatives, community leaders and local administrators almost always encouraged couples to stay together, through a variety of means – for example, by admonishing the husband to not hit his wife – rather than treating domestic violence as a crime of physical assault with a victim in need of protection. In one case, a woman who was sexually abused by her husband approached a traditional elder (Chapter 5) for help. The elder advised her to avoid the formal justice system because “if the case was

filed as a rape case and solved at the township court”, there would be “winners and losers” and “the man would go to prison”. The general goal of any intervention was to maintain marital harmony; this seldom recognised the inherent vulnerability of a woman in an unequal and abusive relationship.

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

Respondents, including members of CLAs, explained that Jinghpaw customs traditionally dictated that a woman must pay back twice the amount of her dowry in order to obtain a divorce, and that a woman would lose custody of her children in the event that a divorce was granted. In two reported cases, the figure of double the dowry amount was used as a starting point from which to negotiate compensation to be paid by the wife to obtain a divorce. One respondent, who regularly sought refuge from her husband’s violence at her parents’ house, stated that she continued to return to the marital home for the sake of her children.

Several cases emerged in which local leaders had allowed a woman to divorce her husband, but usually only after she had suffered severe and prolonged abuse (Box 11).

#### **Box 11**

A man started beating his young wife shortly after she became pregnant.

Particularly after drinking, the man would physically and verbally abuse his wife, beating her so violently once that her earrings were ripped out of her ears. He also sometimes hurt their child. When the woman



pleaded with her husband not to get drunk, he would reply that she should not complain as his mother never made any demands on his father. Once, after an argument, the man took the woman and their child back to her parents' home.

The young woman requested a divorce from the section leader (nehmyaemhu) in her area, and an ad hoc decision-making committee (Chapter 5) was formed to hear the case. The committee was composed of three community elders (lugyi) from the woman's side, three community elders from the man's side and a supervisor (nayaka) whose role was to oversee the committee hearings.

At the first hearing, the committee asked the woman if she really wanted a divorce. The committee told the couple to stay together and promised that if domestic violence continued, the woman could obtain a divorce, and that her husband would have to give her land, their home and custody of their child. The woman agreed to these terms. The committee further decided that the husband should pay Ks.500,000 as an apology (shawashar) to the community elders/committee members from the woman's side because he had shamed the woman's family and community.

Despite the agreement, the man continued to hit his wife, blaming her for the cost of the shawashar. After one particularly violent beating with a rope, the woman fled to her parents' home and again requested a divorce from her section leader. The section leader asked her to wait and see if the situation would improve during their separation, but the husband continued to show up drunk at her parents' home.

The woman requested a divorce for a third time, and an ad hoc committee was again assembled. The man was represented by a local section leader, and the woman was represented by one of her relatives.

After discussions, the committee decided that the woman could divorce the man and retain custody of the child, but that she would have to accept the man's family name. In exchange, the man would have to provide child support. The decision, however, did not

contain details for child support, and the woman ultimately did not receive any from her ex-husband. She also did not receive the land or home promised in the initial agreement.

The section leader who represented the husband stated, "As she was the one who wanted a divorce, she should have paid twice the amount of her dowry in accordance with tradition. I could have demanded that while I was representing her husband, but I did not since she had already suffered under him."

## **Sexual Assault**

Four cases of sexual assault and rape also emerged from the study, none of which were initially reported to the police. In two cases, the young woman's family only learned of the rape when she became pregnant. These assaults were reported to community leaders and local administrators, who attempted to handle the cases on their own and did not refer them to the police (Box 12).

### **Box 12**

While home alone one night, a 19-year-old woman was raped by two brothers who lived in her ward. She became pregnant but was able to hide it from her family because she went away to school in another township. Her parents found out about the rape when she later returned home eight months' pregnant.

Her parents first approached the family of the two brothers, asking them to take responsibility for the pregnancy, but they declined to do anything.

The young woman's family then reported the case to the section leader of the area in which the brothers lived. After listening to both sides, the section leader decided that the boys' family should pay the girl's family Ks.1 million.

After two months had passed and they had not received any compensation, the young woman's family submitted a complaint to a CLA, which held a hearing and decided that the boys' family should pay the young woman's family Ks.1.2 million. The boys' family paid Ks.600,000 in front of the CLA committee members and promised to pay the remaining sum, but the young woman's family never received it.

There appears to be some recognition that rape cases should be handled as criminal matters. In one case, the family of a rape victim was able to bring a case at the township court when, through a series of connections, they were put in touch with an organisation that offered free legal assistance for cases of gender-based violence (Box 13). In another case, an agreement was signed between the mother of a 17-year-old rape victim and the school teacher who was responsible, for compensation in exchange for not reporting the incident to the police. When the teacher failed to pay compensation, a relative of the young woman advised the mother to inform the police. The case is now proceeding before the courts.

### Box 13

A mentally disabled 13-year-old girl lived with her parents in a village. One day, her mother discovered that the girl was pregnant and, after questioning her, found out that one of their neighbours, a married 40-year-old man, had raped the girl many times when her parents were out of the house.

The parents reported the man to their section leader and the local administrator. The local administrator told the section leader to handle the matter, since the dispute was between two parties from his section.

The section leader summoned both parties and questioned them. The accused man categorically denied

raping the girl. The section leader told the girl's family that they would not be able to go to court without witnesses or other evidence such as medical reports.

The next day, the accused man ran away and could not be found. Not knowing where to turn for help, the girl's parents asked a woman who ran a restaurant in their village for advice. The restaurant owner relayed the incident to her husband, a leader of the village's social affairs organisation, who in turn sought help from a journalist acquaintance who lived in the town area.

The journalist came to the village to investigate and published a story about the case. He also advised the social affairs organisation leader to contact a Myitkyina-based organisation that works on SGBV issues. Members of the SGBV organisation came to the village to meet the girl and her family, and they helped the girl's family file a case at the township court.

## ***Sexual Exploitation and Abandonment***

A distinctive phenomenon is apparent in Putao Township. Women who cohabited with government officials and military officers assigned to Putao were subsequently "abandoned" when the officials were reassigned to another duty station. These "unofficial" marriages sometimes produced children, and the women were then left to raise the children by themselves. Respondents noted that outsiders who come to Putao often took advantage of the women's desire to move to the lower parts of Myanmar. When these women found themselves abandoned, they asked their section leaders, local administrators and community leaders for help, but respondents noted that the women were rarely able to achieve an outcome that they wanted (Box 14).

### Box 14

A 25-year-old Lisu woman lived with a military captain and they had two children together.

When the woman learned that the captain would soon be changing duty stations and would be leaving her and their children, she asked a local *thin htauk* and a section leader for assistance in negotiating with the captain. She wanted to accompany the captain with their children, but he would not allow it because he was officially married to another woman.

The woman then asked the captain to take custody of one of their children and to give her Ks.3 million in compensation, but the captain refused, saying he did not have any money. The two sides had a long argument but could not come to an agreement.

Finally, the captain called a colonel for assistance. The colonel came to the woman's house, gave her Ks.80,000, told her that they did not want to hear anything more about the matter, and left with the captain. Since then, the woman had not received any money or communication from the captain, and struggled to care for her two young children.

## Civil Documentation

In some urban study sites, Chinese, Ghurkha and Hindu respondents described having had difficulties acquiring identity documents that would allow them freedom of movement, the right to own land and access to education and business opportunities. Chinese respondents also described having had difficulties obtaining naturalised citizenship.

Respondents of Chinese and Ghurkha descent reported long processing times (two to three years) and having to pay additional sums of money (approximately Ks.200,000 to Ks.300,000) to immigration officials when applying for National Registration Cards (NRCs). Even after paying officials and providing the

necessary documentation, respondents were still unable to obtain or renew their NRC. In at least one case the desired NRCs were obtained unlawfully by paying large sums of money (Box 15).

As Foreign Registration Card (FRC) holders, some respondents of Chinese descent reported having to pay a mandatory annual tax of Ks.6000 and explained that they cannot own land. One respondent remarked that many Chinese people who hold FRCs and who have lived in Kachin State for several generations still have not obtained Naturalised Citizenship Scrutiny Cards (NCSCs). Respondents who had obtained naturalised citizenship and were NCSC holders reported facing travel restrictions; they are not permitted to travel without prior approval from the immigration office and must report to the immigration office at the destination and also upon return.

### Box 15

Ten years ago, a woman of Chinese descent who was born in Banmaw was able to obtain NRCs for her family.

The woman first paid Ks.1 million to a broker, who was a relative of an immigration officer. Four months later, she and her family were listed with the identities of a Bamar family whose members had passed away. The Chinese woman and her family had to take those Bamar names as their own and accept Bamar as their ethnicity. In order to receive their NRCs with the new names, the woman had to pay immigration officials Ks.6 million.

Children who have one parent who does not belong to one of the 135 ethnic nationalities also have greater difficulty obtaining identity documents. In other words, a parent's difficulty obtaining identity documentation also made it more difficult for his or her children to obtain identity documents, thereby perpetuating the problem (Box 16). Some respondents explained

that when special projects are carried out in schools to issue school children with identity documents, children of such mixed parentage are not able to obtain identity documents through the project; instead, their parents must apply directly at the immigration office. One respondent, a Chinese man married to a Kachin woman, reported that his children do not possess identity documents as he is unable to afford to pay the amount that was asked – Ks.30,000 per child – at the immigration office.

### Box 16

Over the past two years, a Hindu woman living in Myitkyina Township has been trying to renew her existing NRC (issued when she was 10 years old) as an adult NRC, as her children cannot obtain identity documents unless she holds an adult NRC.

She travelled twice to her hometown in Mandalay in order to submit her application. Although she paid immigration officials Ks.200,000 during each visit, she was repeatedly told that her application was being processed. In the meantime, her children cannot obtain any identity documents.

*In summary, land-related disputes, drug-related problems and issues arising from the political economy of conflict and resource extraction are sufficiently significant to have become community problems. The rising price of land and the non-transparent redistribution of land previously seized by the military are driving factors in land-related disputes. Private disputes were settled locally, using community knowledge of historical land use and ownership as well as official documentation. Government bodies were not generally helpful in resolving land disputes involving actors outside the community.*

*Widespread drug use and addiction has resulted in negative health, social and economic consequences, with profound impacts on families, par-*

*ticularly women and children. Domestic violence, family break-up and local crime have increased. Jade mining, and exploitative practices by mining companies, have contributed to the problem of drug addiction. Some people attribute the drug trade to ineffectual and corrupt policing.*

*Sexual and gender-based violence is a particular issue of concern. It is exacerbated by social and cultural norms that make it difficult for women to leave abusive situations or receive support and redress following abuse, exploitation or abandonment.*

*Inequality is perceived to be a fundamental reason for the armed conflict between the Tatmadaw and the KIA. The respondents feel they are caught in the middle, suffer from a lack of security and protection, and perceive an absence of accountability. They are frustrated by being unable to seek redress for the negative impact of the conflict on their lives.*

*Chinese, Ghurkha and Hindu respondents have had difficulties acquiring identity documents that would allow them freedom of movement, the right to own land and access to education and business opportunities.*

## CRIMINAL JUSTICE SYSTEM

Justice sector actors consistently highlighted the issue of drugs as one of the main problems plaguing Kachin State. One township administrator explained that “The main reason for drugs coming to this area is that it is not peaceful. It is affected by conflict. Most drugs come from border areas between Kachin and Shan.” State officials generally noted that the drugs were produced in Shan State and transported to Kachin.

Some judges and law officers explained that charges brought under the 1993 Narcotic Drugs and Psychotropic Substances Law depended upon the weight/volume/quantity of drugs

found on a person, and elaborated specifically on sections 16(c)<sup>45</sup> and 19(a)<sup>46</sup> of the law. Criminal justice officials further explained that most drug cases related to drug use and trafficking.

Some officials recognised poverty as a factor that contributed to the high volume of drug-related cases in the criminal justice system. One law officer explained that, “The dealers know they are committing crimes but they do it for their livelihoods”. Another judge stated that, “Most defendants are male, and they have been asked to transport the drugs because they are poor.” Criminal justice officials noted that females constituted a significantly lower proportion of convicted drug traffickers. One police officer observed that, “The main difference between men and women in relation to drugs is that men use and distribute, whereas women do not use and they mainly distribute or sell”. The same officer also noted with concern that convicted drug users and other inmates were not separated from each other in prison, and that a significant majority of the prison population in Banmaw were drug-addicted youths.

One township administrator also described the existence of local volunteer anti-narcotics groups that operated independently of the government and collected information, monitored suspects and provided information to the police or government anti-narcotics task forces. It is unsurprising, therefore, that a significant proportion of criminal cases processed through the criminal justice system were drug and drug-related cases.

One law officer explained that, of the four districts in Kachin State, Moe Hnyin district – comprising Moe Nyin, Hpakant and Moe Kaung Townships – had the biggest cases in terms of weight/quantity and value. This was principal-

ly because of the high caseload from Hpakant Township, due to the existence and operations of the jade mines there.

The highest number of drug cases was from either Myitkyina or Moe Nyin District (figures varied year on year) and particularly from Myitkyina, Waingmaw and Hpakant Townships. The next highest drug-related caseloads were from Banmaw and Putao Districts.

Justice sector officials also reported processing a large volume of cases relating to road accidents and traffic violations at the township level.

The formal justice system did not play a role in relation to the loss of lives as a result of landslides in jade mines.

The caseload in Putao District was significantly lower than in the other three districts. Justice officials in Putao explained that most of the cases in the district originated from Putao Township and that, until very recently, no cases were recorded from Sumprabum, Machanbaw and Nawngmun Townships.

*In summary, drugs are a key problem that is plaguing Kachin. Some judicial actors linked the issue to the ongoing conflict, and some recognised poverty as a contributing factor. Drug-related cases account for a significant proportion of the criminal justice caseload, particularly in jade mining communities. The non-separation of convicted drug users from other prisoners may contribute to the problem.*

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45 “Whoever is guilty of possession, transportation, transmission and transfer of a narcotic drug or psychotropic substance shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine.”

46 “Whoever is guilty of possessing, transporting, transmitting and transferring a narcotic drug or psychotropic substance for the purpose of sale shall, on conviction, be punished with imprisonment for a term which may extend for a minimum of 10 years to a maximum of an unlimited period.”



## CHAPTER 5

# DISPUTE SETTLEMENT TRAJECTORIES

Photo: Poster displaying the objectives of Pat Jasan, Kachin community-based anti-drug movement, Banmaw Township, Kachin State

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

This chapter is concerned with the 76 disputes that non-IDP respondents identified as being of priority concern. It describes how settlement of those disputes was attempted, and sometimes achieved. It also considers the roles and responsibilities of third-party actors at the local and district levels who can assist in the settlement of disputes and concerns about justice.

See Chapter 7 in respect of IDP respondents.

## DIRECT NEGOTIATIONS AND THIRD-PARTY ASSISTANCE

In over three quarters (59 of 76; 77.6%) of cases, respondents negotiated directly with the other party to the dispute. Less than one third (18) of

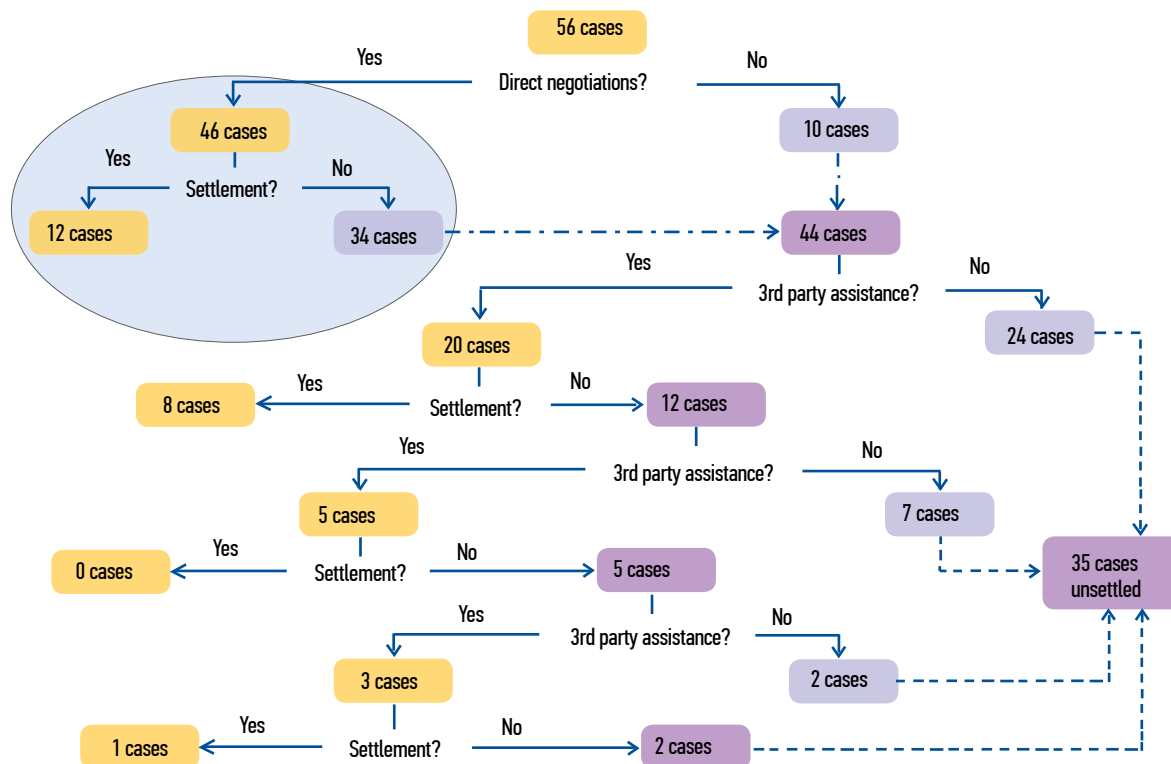
these matters were settled through negotiation, with or without the assistance of a third party.

The six types of dispute of greatest concern<sup>47</sup> together accounted for almost three quarters (56 of 76; 73.7%) of all priority concerns. Figure 5.1 summarizes the settlement trajectories of these 56 disputes. In a large majority of these cases (46 of 56), complainants attempted to settle the dispute by direct negotiations in the first instance; only 12 of the disputes were settled.

Where initial negotiations were not attempted or unsuccessful (44 disputes), 20 complainants went on to seek assistance from a third party, which led to the settlement of eight more disputes. Five complainants then proceeded to seek assistance from other third parties, which led to one more dispute being settled.

No settlement was reached in 35 cases – 62.5% of the 56 disputes of greatest priority concern.

Figure 5.1 Attempts at Settlement of Priority Concerns



47 Land-related disputes (21 disputes), debt owed by others (15 disputes), traffic accident (6 disputes), problems relating to birth and identity documentation (5 disputes), theft (5 disputes) and fight (4 disputes).

A few points merit further elaboration. First, among the top six priority concerns – land-related disputes, debt owed by others, traffic accident, problems relating to birth and identity documentation, theft and fight – all six traffic accident cases and all four cases regarding fights were reported by respondents to be settled. A majority of these were settled through initial negotiations, and the remainder with the assistance of third-party actors.

Second, where the top six priority disputes were not settled through initial negotiations, or direct negotiations were not attempted (44 cases), respondents resorted to third parties for help. Twenty such cases (45.5%) were referred to third parties.<sup>48</sup> A large majority (17) of these were referred to community leaders such as local administrators, “elderly and respected persons”, 10-HHHs or 100-HHHs, and areas-in-charge. In a few instances, respondents reported approaching the Land Records Department, a parliamentarian at the Kachin State Parliament and the Kachin State Government for help. Where they sought the assistance of people other than community leaders, the cases were all land-related disputes. Nine of the 20 cases referred to third parties were eventually settled. The third parties involved included local administrators, 10-HHHs, 100-HHHs, areas-in-charge, “elderly and respected persons” and the township court. In 11 of the 20 cases referred for third-party assistance there was no successful outcome (Figure 5.1).

Third, even where respondents reported settlement of disputes (21 cases of priority concern), not all resulted in a favourable and/or satisfactory final outcome. When there was a favourable or acceptable outcome, respondents expressed satisfaction (e.g., “My land was not taken [following negotiations with the army,] I can stay there as normal and I am satisfied”, “[Negotiations] took three months with [some] officials and the identity documentation was [eventu-

ally] available and that is why we are satisfied”, “[The accident] was my fault and I have to pay compensation. I am satisfied that I do not have to be imprisoned”, “They brought my father to the hospital [following the accident], they cared for and cured my father. So I am satisfied”, “I am satisfied as the other party apologised to me [after the area-in-charge interceded in the fight]”, and “As we are husband and wife, we have to get along after sometime, that is why we are satisfied”). Others expressed satisfaction with the role played by a third party (e.g., “I gave half of the land to my younger brother as the elders decided. The elders solved it in the best way and I am satisfied”). Other sex plained that their rights were restored (e.g., “I am satisfied as my motorcycle [that was stolen] was returned”, and “I regained my land that I owned before and I am satisfied”), or that obligations owed to them were discharged (e.g., “I thought my money would be lost, but now it has been returned and I am satisfied”).

However, some respondents identified unjust outcomes (e.g., “I am not satisfied with the court decision. The complainant became the defendant. There is no justice and I think [the court] did it by taking bribes”, and “I had to pay compensation even though it was not my mistake; my motorcycle was also damaged”), or expressed dissatisfaction with costs associated with settling a dispute (e.g., “I am not satisfied [with the land dispute that was settled by the area-in-charge] as it cost quite a lot of my money”).

Significantly, in half (22 of 44) of the priority cases not negotiated to a conclusion, the complainant did not seek help from anyone or did not take any action. These respondents gave various reasons, including:

- The problem was not sufficiently important (9 instances);
- They were fearful, which included feelings of shame, and that seeking

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



help would result in trouble or violence (7 instances);

- Seeking help or taking action would only be a waste of time (5 instances);
- Respondents did not know what to do, or who could be of help (5 instances);
- Seeking help or taking action would cost too much (4 instances);
- The other party has more money (4 instances);
- The other party has more personal connections (3 instances);
- Help was too far away (2 instances);
- Seeking help or taking action would damage the relationship with the other party (1 instance);
- The problem encountered was part of a national plan (1 instance).

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

In the hypothetical situation involving human trafficking, more than 70% of respondents said they would first seek assistance from the township police or local administrators. If they were unsuccessful, just over half the respondents indicated that they had no one else to turn to or did not know from whom to seek help (Figure 5.2(e), Annex II). In the hypothetical boundary-related dispute, a majority of respondents said they would first seek help from the village

administrator or rely on themselves. If they were unsuccessful, one in three said they had no one else to turn to (Figure 5.2 (f), Annex II).

Very few respondents would approach the traditional elders (yoyalugyi) for assistance in such circumstances.

In summary, respondents overwhelmingly opted not to use the formal justice system but to attempt to resolve their disputes locally – largely without success. In over three quarters of cases, complainants first tried to settle the dispute by direct negotiations. After direct negotiations and/or the assistance of third parties, more than 62.5% of the 56 disputes of greatest priority concern remained unresolved. Not all settlements resulted in favourable and/or satisfactory final outcomes.

Some complainants did not seek help from anyone or did not take any action following unsuccessful negotiations, for reasons including feelings of fear, resignation or shame.

## PLURAL SYSTEMS AND TRAJECTORIES

In Kachin there is a wide range of pathways for settling private disputes outside the formal justice system. Respondents generally indicated that they preferred using non-formal mechanisms to accessing the formal justice system. Their reasons included:

- Going through the formal justice system could result in imprisonment for one of the parties;
- Going to the police or courts would involve bribes;
- Going to the police or courts would involve long processing times;
- Victims would not receive compensation through the formal justice system;

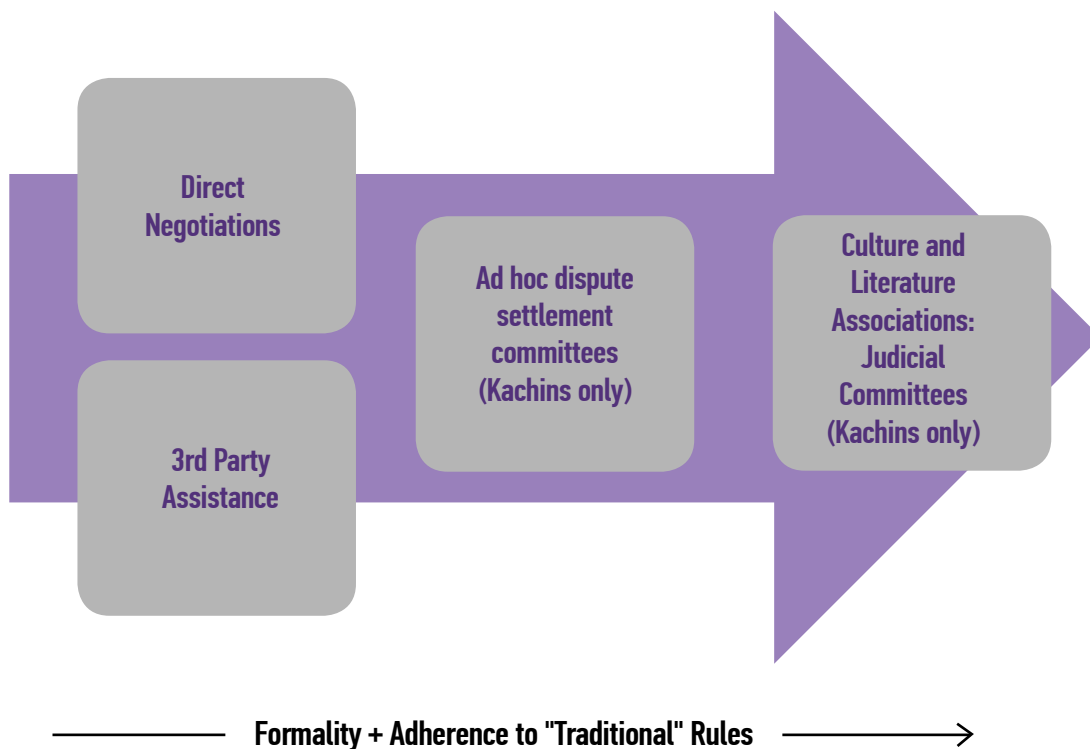
- Some informal mechanisms allow for disputes to be settled discreetly;
- A perception that state officials in places such as Putao were unfamiliar with local customs;
- A perception that state officials in places such as Putao were not competent, because they were assigned there at the beginning of their careers, or as punishment for transgression.

### Private Dispute Settlement: Socially Acceptable Pathways

Socially acceptable pathways for the settlement of private disputes range across a spectrum according to their degree of formality and ad-

herence to traditional rules (Figure 5.2). Ethnicity-based CLAs (စာပေနှင့်ရိုးရာယဉ်ကျေးမှုအဖွဲ့အစည်း): sapaehninyoya yin kyaehmu ah hpwe ah see) adopt the most formal processes, which are highly procedural and adhere most closely to customs and traditions. More often, it seems, people seek help from ad hoc decision-making committees comprising five, seven or nine respected community members. These committees follow some traditional customs but allow for more flexibility. The more informal pathways of direct negotiations with the opposite party and dispute settlement with third-party assistance have few if any prescribed processes, and outcomes are generally based on a variety of factors rather than sole consideration of custom. These (direct negotiations and third-party assistance) were the two main pathways available to non-Kachin respondents.

Figure 5.2 Socially Acceptable Private Dispute Settlement Pathways



It is important to note that these processes are not static and should not be considered fixed pathways. In reality, traditions and customs evolve, and practices may vary from community to community, even within an ethnic group. Vocabulary, too, differs from place to place; respondents from different study sites sometimes ascribed different names to the same processes, or, conversely, ascribed the same name to different processes.

The limited findings from this study provide a snapshot of a complex reality in which traditional cultural practices are being adapted to fit a changing, modernising world. For example, traditional dowry items given in Kachin marriages, such as gongs and silver pipes, are now replaced by sums of money. In cases of physical injury, compensation amounts traditionally determined according to which body part was injured are instead negotiated and agreed upon by the disputing parties. Although compensation amounts are now much more negotiable in general, certain customs and norms continue to be practised, at least in some communities. In some cases of divorce, for example, the divorcing parties must pay for a ceremonial meal (shawashar in Jinghpaw language) for community elders in order to “apologise” to their community and to inform them of the divorce. Sometimes, traditional beliefs are mixed with Christian practices: in at least one Rawang community, cases of assault occurring inside a home are considered more consequential than those occurring outside or in a public space, where the home and entire family are disgraced. Customarily, fees have to be paid for prayer ceremonies to “wash the home” (အိမ်ဆေးဝေးခ: aeinhsaepaekha). In such cases, this enables a “disgraced” family to nominate compensation sums that are higher than the actual prayer costs.

### ***Culture and Literature Association Judicial Committees***

At the more formal end of the spectrum of socially acceptable pathways is dispute settlement by CLAs, which are ethnicity-based social organisations. The research team met with the Kachin (encompassing the six main Kachin subgroups), Jinghpaw and Lacid CLAs in Myitkyina, the Rawang and Lisu CLAs in Putao and the Shan CLA in Moe Nyin. Although the organisational structures of individual CLAs differ, CLA committees at township and central levels are directly or indirectly elected, which confers upon them authority and legitimacy.<sup>49</sup>

While the main activities of CLAs revolve around preserving and promoting cultural heritage, including language and dance, some CLAs have judicial committees that perform a dispute settlement function. The Kachin, Jinghpaw, Lisu and Rawang CLAs interviewed for this study have committees responsible for settling disputes lodged with them.

Colloquially, this forum for dispute resolution was referred to as a “traditional court” (ရိုးရာရုံး: yoyayoun) or a “traditional justice committee”, so called because committee members generally applied traditional rules in their decision-making process. The most common issues that came before the CLA judicial committees were disputes between couples and land-related disputes. Other issues included inheritance disputes, elopement and forced marriage, disputes between households, verbal disputes, theft, physical injury and accidental death.

In general terms, the dispute settlement process is fairly similar across the judicial committees. When a complaint is received, the committee members review it, conduct an investigation

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49 For example, the organisational structure of the Lisu CLA (founded in 1945) is grounded in village-level arrangements. Every 10 households choose a 10-HH leader, and these select a ward/village tract leader. These in turn elect executive committee members from among themselves. Similarly, for the Rawang CLA (founded in 1951), which exists in 12 townships with significant Rawang populations, each of the 12 township committees is composed of representatives from each Rawang village within the township. These township committee members, as well as other elders from the community, Christian leaders and committee patrons known as nayaka, together elect the central committee that is based in Putao.

and convene the concerned parties for a hearing and consultation. The committee members summon witnesses and listen to witness testimony from both sides. In addition to the parties themselves, their families, respected community members and other involved persons may be summoned to testify. The committee sometimes meets with each party separately and sometimes meet the parties together. After all relevant parties have been consulted, the committee makes a decision and produces a written agreement that is also read out in public. If both parties agree to the decision, they sign an agreement before the judicial committee and other witnesses. Representatives from the Kachin and Rawang CLAs said that the parties shook hands to signal agreement. Rawang CLA representatives also said that parties to the dispute and judicial committee members also prayed together after an agreement had been reached.

One characteristic of the Lisu CLA Judicial Committee proceedings is that hearings are traditionally more like a trial, with each party represented by Lisu “lawyers” (zhipharin the Lisu language). During the hearing, the complainant’s lawyer presents arguments against the other side and lays down a stick on the table for each argument; the defendant’s lawyer then rebuts each charge. The committee considers all the evidence presented and votes on a decision.

It is worth noting that relatives of the parties and respected persons/community elders are also consulted, and they speak in the interests of their respective sides. These people were described as “those with wisdom and [who] are respected” or those with “extensive knowledge of traditional rulings and experience with previous cases”. These respected persons are also known as traditional elders (yoyalugyi). The Rawang CLA also has a patronage committee of elders comprising those who have experience in politics and advancing the Rawang cause. These patrons (nayaka) are sometimes also in-

vited to provide advice and guidance when the CLA Judicial Committee deliberates.

The specific role of the judicial committee and its members, however, appears to vary on a case-by-case basis. A representative from the Kachin CLA stated that “there is a range of practices in solving problems”. The limited findings of this study support that statement. At times, the committee may take on a role similar to a mediator or a negotiator: a Jinghpaw CLA representative described the process as “shuttle negotiations”, with the committee going back and forth between the two sides to convince the parties to reach an agreement. At other times, the committee’s role looks more like that of an arbitrator (Box 17). In some cases, the committee may play several roles over the course of the process: if the sides cannot come to an agreement, the judicial committee may deliver a decision to the two parties after listening to them, and both parties are still asked to agree to the decision. In disputes between married couples, including where one or both parties seek a divorce, the committees nearly always try to persuade the couple to stay together. Only after several “trial” periods do the committees proceed with divorce settlement (Box 18).

#### **Box 17**

In 2015, a land dispute involving three remote mountain villages was reported to the Kachin CLA.

Residents of the first village (Village A) wanted to sell some land located within their village boundary (which was drawn up during the colonial period). Residents of a second village (Village B), however, objected to the intended sale, claiming that their ancestors came from the area of Village A and that they therefore had a claim to the land in Village A.

When the dispute could not be settled at the village level, or by a police officer, representatives from the three villages approached the Kachin CLA for help.

The Kachin CLA Judicial Committee asked each side for the reasons for their claims and listened to witness testimony, including testimony from residents of another village located between the two disputing villages (Village X). In total, 10 residents from Village A, eight residents from Village B and two residents from Village X participated in the meeting.

After listening to the testimony, the Judicial Committee came to the conclusion that the residents of Village B had no claim to the land in Village A, as there was another village in between. The committee further explained that the claim of residents from Village B that they had a traditional right to the land in Village A because their ancestors originated from the area was no longer relevant in the modern day; they cited the fact that, although the ancestors of Kachins living in the valley today came from the mountains, they are not entitled to claim land in the mountains.

#### Box 18

A Bamar woman who was married to a Rawang man submitted a complaint to the Rawang CLA, seeking a divorce from her husband and claiming that he sexually abused her, even when she was pregnant.

The CLA Judicial Committee summoned the man and the woman to a hearing and explained the consequences of divorce. At a second hearing two days later, when the woman did not change her mind, the committee insisted that the couple reconsider divorce and wait an additional week.

Finally, at the third hearing, the committee proceeded with divorce deliberations and decided that the father had the right to give the unborn child his name, and that he would have the right of custody, according to tradition. Both the man and the woman contributed Ks.5,000 as process fees, or “office running costs”.

Several observations may be made about dispute settlement through the CLA judicial committees:

- The notion of justice is understood as providing satisfaction for all parties. As one CLA representative explained:

“Our goal is to have a satisfactory agreement. We make a decision for both parties. Even if there is anger, we have been living in the same community for a long time. Our children will live together. So we try to find satisfactory outcomes for both parties.”

- The tight-knit nature of these communities means that communal harmony is an important value in decision-making. Thus, decision-makers consider the well-being of all members of the community. Additionally, in order to provide a satisfactory outcome for everyone, CLAs have relaxed some traditional practices, take into account mitigating factors and allow flexibility in compensation amounts. One CLA representative stated that they can no longer strictly follow tradition and that they need to find a balance: “These days, we prefer Christian customs because it is based on God’s love”.
- The CLA judicial committee’s authority comes in part from the consent and agreement of the parties to approach the CLA for assistance. A CLA does not have any punitive mechanism to enforce its decisions; parties voluntarily comply with a CLA’s decision.
- Compensation is the primary form of settlement. With the exception of land or custody disputes, where decisions involve awarding one party possession of the disputed land or custody of a child, monetary compensation tends to be the main form of redress. Although traditional rules exist for compensation amounts (for example, a certain item such as a gong or an animal), these are flexible and are usually arrived at with the participation of the

disputing parties, rather than handed down by an adjudicator as a form of punishment.

- CLA judicial committees make reasoned, public decisions based on the arguments and evidence presented at hearings. Decisions are usually read out at the conclusion of a case and made known to all members of the community.
- Patriarchal norms embedded in traditional customs persist, disadvantaging women who seek access to justice through this forum. Conversations with CLA representatives and individuals who have sought divorce through a CLA indicate that it is much more difficult for a woman to obtain a divorce than it is for a man. A CLA representative said:

“If a husband wants a divorce, but not the wife, the committee will mostly consider the husband. [...] When a couple wants to divorce, we have to consider traditions. It is almost 100% impossible to divorce the woman from the man because of tradition, except for when the man goes crazy or becomes abnormal.”

### **Ad Hoc Dispute Settlement Committees**

Ad hoc dispute resolution committees or boards composed of respected community leaders operate with less formality than CLAs. Respondents referred to this pathway as luhmuyeh (လူမှုရေး),<sup>50</sup> which translates literally to “social affairs”.

On this pathway, dispute resolution committees are formed only when disputes arise. The disputing parties themselves each propose

respected elders (lugyi) or traditional elders (yoyalugyi) from the community to serve on the decision-making committee. Each side proposes two, three or four individuals, depending on the severity of the matter. One person, given the title nayaka, is chosen to preside over the committee, bringing the total number on the committee to five, seven or nine members. The role of the nayaka is mainly supervisory. The board members are chosen for their knowledge of traditions and their reputation within the community for fairness. As with the CLA judicial committees, the ad hoc committees have no means to enforce their decisions; the decisions are abided by because parties have willingly asked for the elders’ help and consented to the process.

Procedurally, the ad hoc dispute resolution committees function in a similar fashion to the CLA judicial committees, with both sides making arguments before the committees, which then make decisions (see above). Respondents noted, however, that hearings in front of the ad hoc committees are much less formal and procedural. Disputants generally do not need to submit a complaint and then wait for a summons in order to participate in a hearing. A greater number of people participate in these meetings and observers may also freely offer their opinions. The fact that the committee members usually know the disputing parties, since they come from the same community, also adds to the familiar atmosphere.

In Myitkyina Township, people sometimes hire “social lawyers” (လူမှုရေးရှေ့နေ :luhmuyehsheinae) to represent them, or to speak on their behalf in luhmuyeh hearings.<sup>51</sup> These “social lawyers” are hired for their eloquence and ability to speak persuasively. They also need to be well versed in traditional rules and customs. One reported receiving an honorarium of between Ks. 50,000 and Ks.100,000 at the end of the process. In Lisu communities in Putao, a type of “lawyer” (zhiphar) may be hired as a representative.

50 Rawang respondents described these committees as kan law pwe (ကန်လော့ပွဲ in Myanmar language).

51 Note that luhmuyehsheinae also sometimes represent parties in direct negotiations (Table 5.1).

Sometimes, one of the members of the board will also represent one side in the hearings.

As the term *luhmuyeh* suggests, the ad hoc committee members are more prone to take into account “social” considerations when making decisions, rather than strictly adhering to traditional rules and customs. Respondents noted the flexibility of the *luhmuyeh* process as one of its strengths; the dispute resolution committees can take into account contextual information and allow for mitigating factors. One social lawyer highlighted the concept of “*naalehmu*” (နားလည်မှု : literally, “understanding”) – which can be understood as coming to a common understanding – as a concept or principle underlying the *luhmuyeh* process. The goal in this process is to achieve a satisfactory result for all parties (Box 19).

#### Box 19

Two families shared a common plot of land and worked together on it for many years. When land prices increased, both families wanted to claim private ownership of the land, but neither side had official documents.

The families agreed to form an ad hoc committee of five community elders to consider the situation. After listening to both sides, the committee decided that the land should be divided equally, as both sides had worked on the land for many years.

As with cases settled by CLAs, compensation amounts in cases of physical injury that come before ad hoc committees are negotiated. Unlike the CLA judicial committees, the *luhmuyeh* process allows for more flexibility in divorce cases. For example, in order for a Kachin woman to divorce her husband according to traditional rules, she must pay him back twice the amount of the dowry (ကွမ်းစို : *kwunhpoe*) he paid her family when they were married. *Lu hmuyeh* committees, however, may take into account the reasons for which a woman seeks divorce. If they are due to the husband’s failings, such as domestic violence or adultery, the committee

may not require the woman to pay the traditional compensation amount – twice the dowry – in order to obtain a divorce, making it marginally easier for a woman to obtain a divorce through *luhmuyeh* proceedings than through a CLA committee. However, patriarchal norms continue to underlie decision-making, serving as the baseline to which mitigating factors apply (Box 20 and Box 21).

#### Box 20

A married *Jinghpaw* couple lived together in a ward. The husband became addicted to drugs and began to physically and sexually abuse his wife.

After experiencing 10 years of abuse, the wife complained to the *nehmyaehmu* (local leader in charge of her area) and asked for a divorce, complaining that her husband had contracted HIV. The husband refused to grant the divorce and a *luhmuyeh* committee was formed to hear the case. With the committee’s help, the husband agreed to stop using drugs and to stop abusing his wife, and the wife agreed to live with her husband for a two-month trial period.

Two months later, the wife again asked for a divorce as her husband continued to use drugs and commit domestic violence. The *luhmuyeh* committee again listened to both sides and decided that the two parties were at fault: the man for the same offences and the woman for having an affair. The committee decided that the husband and wife should continue to live together, but, in case of continued use of drugs, the man would have to accept a divorce without repayment of the dowry and would lose custody of their children. Both sides agreed to this arrangement.

Three months later, the wife again asked the *luhmuyeh* committee members for a divorce. She was privately told, however, that she should “be patient with [her] husband as he may die soon”. If she wanted to divorce him immediately, she would have to pay back three times the amount of dowry fees.

The woman continued to pursue an official divorce, and the *luhmuyeh* committee decided that she would not have to pay any dowry compensation because of

two mitigating factors: because she had delivered three children and had already suffered in her marriage at the hands of her husband. However, they decided the husband would retain custody of the three children and the house that they shared, according to tradition. In the end, the woman returned to her parents' home alone.

### Box 21

A Rawang woman lived with her two children and husband in Putao. Since the husband did not work and was unable to support the family, the woman went to work in Yangon.

When she returned three years later, she informed a local respected elder (ah shapeh) that she wanted to divorce her husband because he continually failed to support the family. A nine-member committee was set up to settle the disagreement. The husband did not consent to a divorce, stating to the committee that, "I paid money to her parents to marry her. So she must listen to me, and I do not agree with the divorce". The woman insisted on a divorce, and the committee asked the husband about the terms to which he would agree to a divorce.

Although Rawang culture does not require a woman to pay compensation for a divorce, the husband asked to be repaid the Ks.3.8 million he paid his wife's parents when they married. The woman responded that she could only afford Ks.500,000.

The committee suggested that the man accept the woman's offer and that he agree to the divorce, noting that her desperation to separate was largely due to his lack of responsibility. The man continued to refuse unless he received full compensation, and the woman proposed a counter offer of Ks.800,000. The committee finally decided that the compensation amount would be Ks.800,000, to which both sides agreed. The man retained custody of the children according to Rawang custom, but the committee persuaded the man to allow the children to visit their mother.

In addition to marital disputes, the types of cases typically settled through the luhmuyeh pathway include inheritance disputes, issues related to land possession, theft, and traffic accidents resulting in physical injury. The luhmuyeh process is also considered by some to be better suited than the CLA pathway in cases in which disputing parties belong to different clans or ethnic groups, because the traditional customs of different groups vary.

A former village administrator estimated that, in his experience, the ratio of cases settled through luhmuyeh proceedings to cases settled by the township CLA judicial committees was approximately four to one. The reasons given for some people's preference of luhmuyeh committees over CLAs included:

- People feel that they can speak more freely in luhmuyeh hearings as they are less formal;
- The CLA process does not always allow for *nalehhmu*, or understanding, to be achieved through negotiation;
- CLA judicial committee members come from different parts of the township and are not familiar with the parties;
- Lu hmuyeh hearings can be held anywhere and are usually held in someone's house within the ward or village; for CLA hearings, parties must incur transportation costs for themselves and their representatives to travel to the CLA office where hearings are convened;
- Parties' chosen representatives sometimes cannot, or will not, travel to the CLA office for hearings;
- Minor issues such as theft and fights are not always accepted by the CLA judicial committees;
- Dispute settlement through CLA judicial committees is time consuming and can involve multiple summonses.



## **Direct Negotiations (Often With Third-party Assistance)**

The most common socially acceptable trajectory for settlement of private disputes is direct negotiations between the parties, often with third-party assistance. This pathway tends to be informal, with few rules and processes. The driving principle of direct negotiations is nah lehhmu, coming to a common understanding between parties in order to find a satisfactory outcome. In practice, this most often means that compensation amounts are negotiated between the two parties, who employ various arguments and reasons to try to persuade the other side to compromise on the amount of compensation (Box 22).

### **Box 22**

A fight occurred among several individuals, and two men were injured and taken to the hospital. Relatives of the injured men and their local community leaders went to the home of one of the assailants and demanded compensation of Ks.800,000.

A lay religious leader (thin htauk) representing the side of the assailants explained, "The mother of the assailant passed away only two weeks ago, so the family is on a tight budget. Ks.800,000 is too much. Let's make the amount Ks.200,000."

The relatives of the injured men responded that, "Ks.200,000 is just a drop in the ocean. In Putao, a chicken is priced at around Ks.15,000. We had to kill eight chickens just to pay for the hospital. The amount you offer is only equal to the cost of the chickens."

After further discussions with the assailants' families, the thin htauk offered to increase the amount to Ks.400,000. The influential elders representing the injured men replied, "That is as if you are not paying us any compensation. We will not accept such a low amount." The thin htauk representing the assailants pleaded, "Please do not accuse us of being mean with money. We, as Christians, have to show loving kindness

to one another. His mother has died very recently, so I do not think it is good in this case to demand a high compensation amount."

The two sides finally agreed on a compensation amount of Ks. 400,000, as well as a goat for a traditional prayer ceremony for the recovery of the injured men.

The communal nature of socially accepted pathways means that negotiations are very often carried out with the involvement of the disputing individuals' families and other community members. Traditionally, the father or patriarch speaks on behalf of his immediate family members. If the father or patriarch is not available, a close relative steps in. Respondents also reported frequently asking for assistance from local leaders in charge of their household grouping (e.g., area-in-charge), lay religious leaders (ဆင်းတော် : thin htauk), traditional elders, "social lawyers" (luhmuyehsheinae, or zhiphar in Lisu communities), or other individuals considered to be influential or eloquent. These people would speak on behalf of one party in negotiations; they do not play a neutral role.

The testimony of witnesses from the community can also play a role in influencing negotiations (Box 23).

### **Box 23**

A man living in a village drove his motorbike into the city and accidentally hit a woman, breaking her arm. The woman went to the hospital for treatment, and the children of the woman kept the man's motorbike.

The man asked his village administrator and the man in charge of his section of the village (yaqkwehmu, see below) for help in getting his motorbike back. The village administrator, the yaqkwehmu and the motorbike owner went into the city to meet the family of the injured woman.

The woman's family demanded Ks.1.5 million in compensation. The village administrator asked whether the amount could be lowered, explaining that the motorbike owner had no money and in fact had to borrow money to build his house. The woman's family lowered the amount to Ks.1 million, but the motorbike owner countered that he could only afford to pay Ks.800,000. The two sides came to an agreement on Ks.900,000, and the man immediately paid Ks.200,000 with a promise to pay the outstanding amount at the end of the month.

When the man and the yaqkwehmu returned to the city to pay the outstanding sum, several people from the woman's community who had witnessed the accident told the motorbike owner that they thought the woman had intentionally got in the way of the motorbike. They expressed their collective opinion that the agreed compensation amount of Ks.900,000 was too much, and they volunteered to speak on the man's behalf. The man did not want to go through the process of negotiation again, but he and representatives asked the woman's family if they could reduce the compensation amount given what the community members said. The woman's family agreed to a final amount of Ks.750,000.

Respondents reported preferring direct negotiations in "small" cases such as repayment of loans, debts owed, physical injury and traffic accidents (Chapter 4). Direct negotiations were also preferred when one or more disputing parties wanted to keep the matter from public knowledge, as would be the case if it were processed in the formal justice system or even through a CLA (Box 24).

#### **Box 24**

A married government official was having an affair with a woman. One day, the man and the woman had a car accident in Naypyidaw, and the woman, who was the passenger, was killed.

The woman's family reported the case at the police station. However, the man wanted to keep the case confidential, so he and his relatives offered to negotiate with the woman's family.

The woman's family accepted, and hired a local section leader, the yaqkwehmu, to represent their side in negotiations. The yaqkwehmu traveled to Naypyidaw to negotiate with a representative from the man's side.

On behalf of the woman's family, the yaqkwehmu demanded Ks.10 million as compensation for the woman's death. The man's representative replied that Ks.10 million was too much for the man, and asked if the woman's family would accept Ks.5 million. After further discussion, the two sides agreed that the case should be withdrawn from the police station and that the man would pay the woman's family a compensation amount of Ks.5 million.

#### **Dispute Settlement by an Individual Third Party**

A fourth socially acceptable pathway for the settlement of private disputes is simply seeking assistance from a third party who acts in his/her individual capacity. This is a common dispute settlement trajectory where a third party has a specific mandate (Box 25) or expertise. The difference between this pathway and that above (direct negotiations, often with third-party assistance) is that here the third party has a neutral role and does not side with either of the parties to the dispute.

#### **Box 25**

A victim of a burglary reported his situation to the local administrator and 100-HHH. The ward administrative group summoned the victim and suspected perpetrators to their office and questioned them. The perpetrators admitted to committing the crime.

The local administrator then asked the victim how he wanted to be compensated for the stolen property.

The administrative group negotiated between the two sides and made a final decision. The local administrator also required the perpetrators to sign a *khan wun*, promising not to repeat the crime.

leadership role within their communities, and typically are men. It is also not uncommon for an individual third party to take on multiple leadership roles within their community. For example, a traditional elder (*yoyalugyi*) could have been a former village administrator and, given his knowledge of customs, may also act as a social lawyer (*luhmuyehshineh*).

Depending on the type of dispute, a third party may act more as a mediator, a negotiator or an arbitrator. These third parties in dispute settlement are usually recognised to have some

Table 5.1 describes the various third-party actors encountered during the study, and the potential roles each might play in socially acceptable pathways to dispute settlement.

Table 5.1 Third Party Actors: Potential Roles in Dispute Settlement

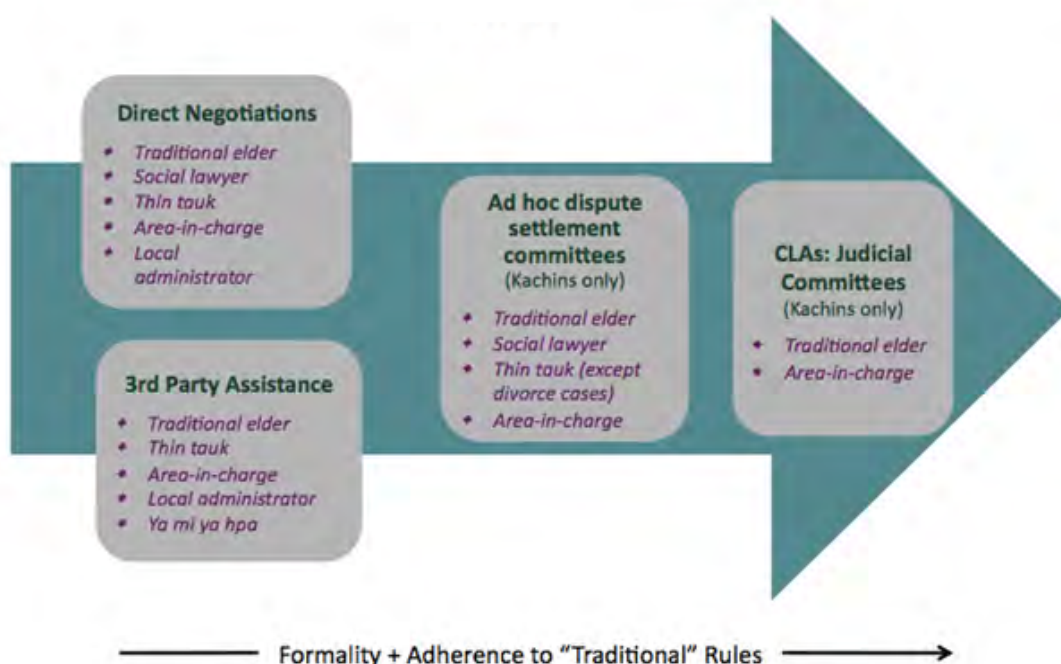
	Description	Potential Roles
<b>Area-in-charge/section leader</b> (ရပ်ကွက်မှူး; <b>yaqkwehmu</b> / နယ်မြေမှူး; <b>nehmyaehmu</b> / အုပ်စုမှူး; <b>ouksuhmu</b> )	<ul style="list-style-type: none"> <li>In charge of a geographic section within a ward/village, which may be based on ethnicity/religion</li> <li>Sometimes collaborates with local administrators and/or other section leaders to settle disputes within their area/section, such as fights, traffic accidents, drug-related problems, public nuisance related to drinking, debt, property rental, land boundaries and inheritance</li> </ul>	<ul style="list-style-type: none"> <li>Serve on ad hoc decision-making committees and/or represent parties</li> <li>Represent parties in direct negotiations</li> <li>Resolve disputes individually</li> </ul>
<b>“Elderly and respected person”</b> (ရပ်မိရပ်ဖ; <b>ya mi yahpa</b> )	<ul style="list-style-type: none"> <li>Encountered in more urbanised communities</li> </ul>	<ul style="list-style-type: none"> <li>Represent parties in direct negotiations</li> <li>Resolve disputes individually</li> </ul>
<b>Local administrator (Ward/village tract/village administrator)</b> <b>Master of ceremonies</b> (နာယက; <b>nayaka</b> )	<ul style="list-style-type: none"> <li>Indirectly elected by their constituency and assumes responsibilities pursuant to the 2012 Ward and Village Tract Administration Law</li> <li>Particularly important for issues involving government departments</li> <li>Settles disputes between couples, traffic accidents, theft, fraud, fights, verbal disputes and land cases</li> </ul>	<ul style="list-style-type: none"> <li>Represent parties in direct negotiations</li> <li>Resolve disputes individually</li> <li>Preside over ad hoc decision-making committees and participate in decision-making</li> </ul>

<b>Patron</b> (နာယက; <i>nayaka</i> )	<ul style="list-style-type: none"> <li>Respected elder who is well-versed in traditional customs</li> </ul>	<ul style="list-style-type: none"> <li>Consult to CLA judicial committees</li> </ul>
<b>(Local) religious leader</b> (pastor; သင်းထောက်; <i>thin htauk</i> )	<ul style="list-style-type: none"> <li>A thin htauk is a lay person approved by church members to serve a role in religious activities<sup>52</sup></li> <li>Relied on for disputes considered to have a “moral” character, such as domestic violence, arguments between couples and drug addiction</li> <li>Method of solving issues involves prayer and preaching</li> <li>As religious leaders, not permitted to be part of divorce proceedings</li> <li>Also mediate traffic accident cases</li> </ul>	<ul style="list-style-type: none"> <li>Serve on ad hoc decision-making committees and/or represent parties</li> <li>Represent parties in direct negotiations</li> <li>Resolve disputes individually</li> </ul>
<b>Social lawyer</b> (လူမှုရေးရှေ့နေ; <i>luhmuyehsheinae</i> )	<ul style="list-style-type: none"> <li>Eloquent person hired to advocate on behalf of a party</li> </ul>	<ul style="list-style-type: none"> <li>Represent parties in hearings before ad hoc committees</li> <li>Represent parties in direct negotiations</li> </ul>
<b>Traditional elder</b> (ရိုးရာလူကြီး; <i>yoyalugyi</i> )  <b>(Rawang language: ah shapae, kha shin shauk)</b>	<ul style="list-style-type: none"> <li>Elder in the community who is respected for knowledge of traditions</li> <li>Settles matters such as divorce and SGBV, physical injury (including arising from traffic accidents), land-related disputes, theft and fights</li> </ul>	<ul style="list-style-type: none"> <li>Serve on CLA judicial committee (if member of CLA)</li> <li>Represent parties at CLA hearings</li> <li>Serve on or consult to ad hoc decision-making committees</li> <li>Represent parties in ad hoc committee hearings</li> <li>Represent parties in direct negotiations</li> <li>Resolve disputes individually</li> </ul>

Figure 5.2(a) locates the various third-party actors on the spectrum of socially acceptable pathways for the settlement of private disputes.

52 Although a thin htauk is a lay person and does not receive a salary from the church, he must adhere to certain behavioural standards, such as abstaining from alcohol and always speaking the truth.

Figure 5.2(a) Socially Acceptable Private Dispute Settlement Pathways: Third Parties



## Plural Pathways

The variety of socially acceptable pathways means that, in relation to private disputes, disputants are sometimes able to choose pathways that best suit their needs and preferences. As discussed above, people choose certain pathways for various reasons, including costs, flexibility, familiarity, processing time, travel considerations and expected outcomes, including avoiding imprisonment (Box 26).

### Box 26

A few days before Christmas, a man driving a vehicle hit a boy and killed him. The man was to be married within a few days, so religious leaders in the community negotiated for the police not to arrest him, by assuring the police that the case would be settled in a socially acceptable way before the CLA judicial committee.

Both parties were motivated to settle the case as soon as possible. The driver wanted to avoid the formal justice system in order to avoid imprisonment; the victim's family did not want the driver to evade responsibility. Both sides also wanted to settle the case before Christmas in order to avoid bad luck and disgrace to their families.

They requested the township CLA settle the case expeditiously, and the CLA committee members convened a hearing the next day. The case was settled with the driver agreeing to pay Ks.3 million in compensation to the victim's family.

The following case (Box 27) illustrates how one man pursued multiple for a, in part because of a lack of enforcement in each forum.

### Box 27

In 1982, a Rawang hunter named PhungSar\* shot a sambur deer in the leg and followed it along the trail as it was dying. He soon came upon another hunter from his village, Dee Ram\*, cutting up a dead sambur.

PhungSar suspected that that was the deer he shot, but Dee Ram claimed that it was he who shot the deer. According to Rawang tradition, a hunter must claim the head of an animal that he killed. Should he fail to do so, he would never catch another animal, and the hunter and his descendants would be cursed.

PhungSar believed that that was the sambur he had shot, so he desperately wanted to retrieve the head. Sin Zi\*, a third man, bought parts of the sambur from Dee Ram and informed PhungSar that the sambur leg indeed had a gunshot wound. PhungSar borrowed the sambur leg and showed Dee Ram the leg to prove that he had shot it first. Dee Ram refused to return the deer head.

PhungSar then reported the case to the village head, who judged the case in favour of Dee Ram. Unwilling to accept the village head's decision as final, PhungSar filed a case at the township court. The judge checked the sambur leg, which was presented as evidence, and passed a judgment that required Dee Ram to return the sambur leg and pay a fine of Ks.80. Dee Ram did not return the deer head, saying that it had been taken away by a dog.

In parallel, Sin Zi filed a lawsuit at the township court against PhungSar, alleging that PhungSar had trespassed and taken the sambur leg without permission. PhungSar was found guilty of trespassing, sentenced to 13 days in custody and ordered to pay Ks.200.

Frustrated at the turn of events, PhungSar submitted a complaint against Sin Zi and Dee Ram to the township CLA. The CLA judicial committee summoned Sin Zi and Dee Ram for hearings but they never appeared, so the CLA passed a judgment that the sambur head should be returned to PhungSar. However, no action was taken by anyone following this judgment.

In the intervening years, PhungSar's wife, two sons and daughter-in-law died. PhungSar interpreted this as the curse of not possessing the sambur head. He therefore approached the township GAD, which advised him to go to the court. One of the township court clerks, a local Rawang man, advised PhungSar to obtain a referral letter from the CLA before he could submit a case in court.

In 2015, PhungSar secured a referral letter from the CLA and submitted a case at the township court. After seven hearings, the judge dismissed the case because there was no longer any evidence in existence.

\* pseudonym

*In summary, there is a wide range of pathways for settling private disputes outside the formal justice system. Respondents preferred using non-formal mechanisms to accessing the formal justice system, and chose certain pathways over others for reasons including costs, flexibility, familiarity, processing time, travel considerations and expected outcomes.*

*It is evident that traditional cultural practices are being adapted to fit the modern world. Even the traditional, ethnicity-based CLAs now employ a range of dispute resolution practices. More often, people seek help from ad hoc decision-making committees of respected community members, which are more flexible and prone to take "social" considerations into account and allow for mitigating factors when making decisions.*

*The most common means of settling private disputes is direct negotiations between the parties. This is a communal process driven by the principle of nah lehmu, coming to a common understanding between parties in order to find a satisfactory outcome. This pathway to justice is preferred in "small" cases such as repayment of loans, debts owed, physical injury and traffic accidents or when one or more parties wants to keep the matter from public knowledge.*

*Another common and socially acceptable pathway to dispute resolution is to seek assistance from a neutral third party (who often has a specific mandate or expertise) who acts in his/her individual capacity. Such people are usually leaders within their communities and typically are men.*

## CRIMINAL JUSTICE SYSTEM

State officials explained that they did not generally refer cases to traditional leaders, and that there were no interactions between the administrative and formal justice systems on the one hand and the customary or traditional systems on the other. Some officials said that, if parties were not satisfied with how their cases were dealt with in the customary way, they could be brought before the formal justice system. One judge noted that, in such instances, the courts would not take into account the earlier decisions made by traditional elders.

In Putao Township, justice officials noted a gradual increase in the use of the formal justice system over the past couple of years, in tandem with changes taking place at the national level.

### Police Jurisdiction

Policing is broadly grouped into three categories and corresponding jurisdictions:

- The 10 “serious offences” –murder, armed robbery, robbery, kidnapping, rape, burglary, animal theft, treason, unlawful association and offences under the Arms Act – fall within the jurisdiction of the district police;
- “Other offences” –such as theft of public or state property, vehicle theft, pick-pocketing, normal physical injury, etc.–fall within the jurisdiction of either the district or township police, depending on the sentence attached to the crime;
- “Preventive measures” involve activities pursuant to provisions under the

1945 Police Act, the 1950 Emergency Provisions Act, the 1961 Restriction of Movement and Probation of Habitual Offenders Law, etc. undertaken by the township police, and extend to monitoring of activities such as gambling, alcohol consumption and prostitution.

### Restriction of Movement and Probation of Habitual Offenders

Undertaking preventive measures constituted a significant proportion of the duties and responsibilities of the township police. At the most basic level, such measures were aimed at crime prevention, including paying specific attention to habitual offenders, such as drug users and those under the influence of alcohol.

One police officer explained that the main criterion to be satisfied under the 1961 Restriction of Movement and Probation of Habitual Offenders Law was “whether the presence of the person creates fear in the community, based on the person’s habitual or previous behaviour”. The same officer also described how the Law is typically applied:

“Within a community, a person continually causes nuisance. He may be called to sign a document promising not to repeat the behaviour (khan wun), at the local administrator’s office. If he breaks his promise, the local administrator will submit the document to the township administrator. The township administrator instructs the police to open a case and to prosecute according to the Law. The court can sentence the person to appear at the police station every week.”

Another police officer provided further clarification on the role of the police:

“If the person violates the promise three times, the local administrator will report to the police, who will consult with the officer-in-charge. The police will obtain information from surveillance police to check

whether the information [from the local administrator] is correct. ... Advice from the township administrator is needed to determine whether or not to prosecute ... Charges under this Law are lesser than those under the Penal Code.”

One township administrator stated that action could only be taken against a person if his/her behaviour was in a public space.

## Legal Representation

Judges and law officers discussed the issue of legal representation and legal aid. Some officials recognised the principle of equality before the law, and that legal aid would increase access to justice for defendants. According to one judge, “... it is better if a defendant is represented because he could be acquitted or receive less punishment”. One law officer recommended the establishment of a legal aid organisation:

“Set up a legal aid organisation to assist people who can’t afford lawyers. We can only help to a limited extent. If they had legal aid, the outcome would be more fair and they would have more access to justice.”

However, another law officer noted that, “Even if [defendants] have lawyers, it does not help much because most of the time there is sufficient evidence”, and that, when considering legal aid, it would be necessary to analyse who would benefit most from having legal representation.

## TOWNSHIP ADMINISTRATION

Some administrators at the township level reported spending about one third of their time dealing with complaints.

One township administrator outlined three different ways in which they handle complaints:

- “We meet with the individual complainant and try to find if [the complaint] is based on truth. We try to explain the procedures and their rights according to the law. ... Sometimes people do not actually understand what the law is. So in these cases we explain the law. If we find that there are arbitrary or wrong decisions by respective government departments, we make a warning or deal with it through necessary action.”
- “One [other] way to deal with complaints is the [One Stop Shop]. ... [We explain to people] that certain procedures need to happen before they can claim a service.”
- “If we cannot provide the service, we connect people to respective departments.”

Another township administrator proposed the establishment of a separate body to deal with complaints about government departments:

“If you deal with every complaint, it will never end. Perhaps we can have a separate commission, like an Anti-Corruption Committee, to deal with these complaints.”





Photo: Complaint Centre, Moe Nyin Township, Kachin State

*In summary, there is little or no interaction between the administrative and formal justice system and the customary or traditional systems. People who were not satisfied with the outcome of their cases in the customary system could bring them to the formal justice system, which was gradually occurring in Putao.*

*Some officials recognised that legal aid would increase access to justice for defendants. Given the case-load required to process complaints about government departments, one administrator proposed a dedicated body for the purpose.*



## CHAPTER 6

# ATTITUDES TOWARDS THE JUSTICE SYSTEM AND JUDICIAL ACTORS

Photo: High school sharing the same compound with an IDP camp in Nyaung Pin Ward, Banmaw Township, Kachin State

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

It has been established that, overwhelmingly, non-IDP respondents in Kachin State opted not to use the formal justice system but to attempt to resolve their disputes locally – largely without success. With this in mind, this chapter revisits the matter of shared values and touches on that of public accountability by officials. (See chapter 7 in respect of IDP respondents.)

The chapter first describes respondents’ attitudes towards the formal justice system, and perceptions of those who have a role in the provision of justice services – judges, law officers, the police and community leaders.<sup>53</sup> It proposes

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

## ATTITUDES TOWARDSTHE JUSTICE SYSTEM

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

Table 6.1 Attitudes Towards the Justice System

Subject	Statements	Agree*
BRIBERY	(a) Public officials are not paid enough, so it is acceptable for them to ask for additional payments.	31.3%
	(b) Public officials are meant to serve the public, and it is not acceptable for them to ask for additional payments.	61.7%
ACCESS TO FORMAL COURTS	(a) Having knowledge will increase people’s access to the (government) courts.	58.3%
	(b) Having personal connections with officials will increase people’s access to (government) courts.	37.3%
FUNCTION OF THE LAW	(a) The law protects the interests of the rich and powerful.	33.3%
	(b) The law prevents abuses by the rich and powerful.	58.7%

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

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

Nearly two thirds (61.7%) of respondents agreed that it is not acceptable for government officials to ask for additional payments. One in three (31.3%) thought it acceptable, because public officials are not sufficiently remunerated.

A clear majority (58.3%) agreed that having knowledge will increase people’s access to the formal courts. More than one in three (37.3%) agreed that having personal connections with officials, rather than having knowledge, will increase people’s access to the formal courts.

A clear majority (58.7%) stated that the law prevents abuses by the rich and powerful, while one third (33.3%) agreed that the law protects the interests of the rich and powerful. Both statements could be interpreted as demonstrating the belief that legislation, properly administered, can or should protect the rights of ordinary people. If so, a potential 92% of respondents could be said to hold such a view.

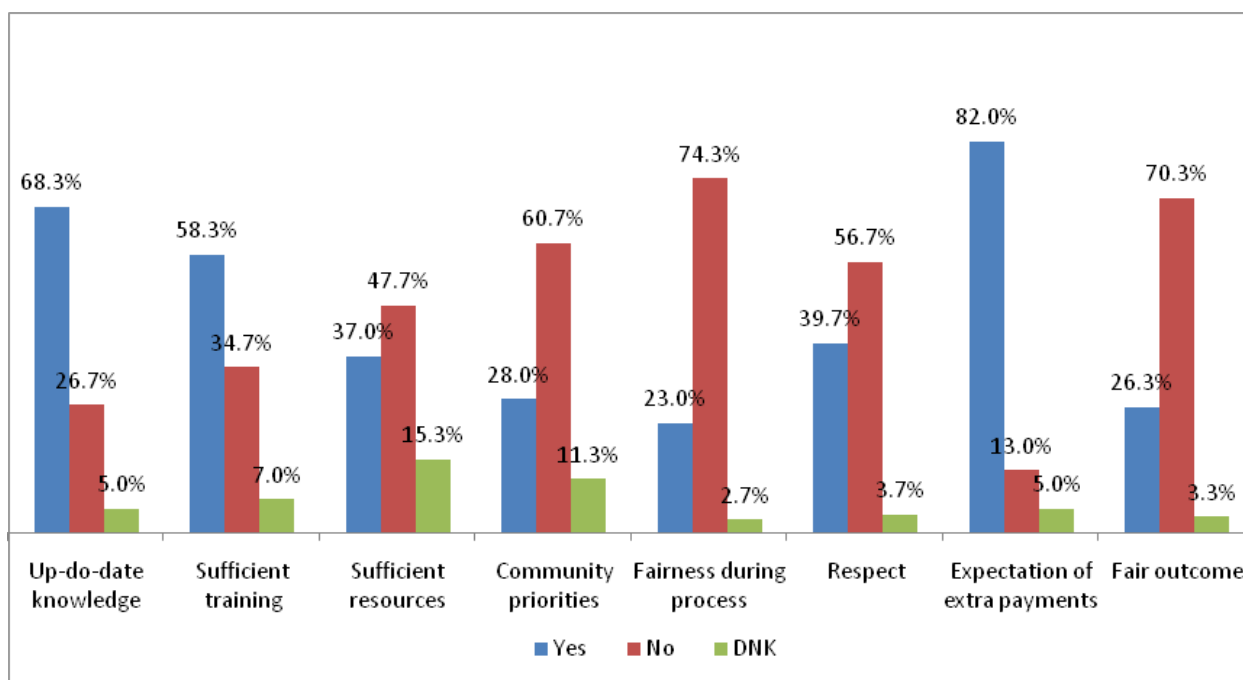
## PERCEPTIONS OF JUDICIAL ACTORS

The study also explored respondents’ perceptions towards formal justice sector actors – specifically, judges, law officers and the police – as well as community leaders.<sup>54</sup> In this context, competence was defined to include up-to-date knowledge, sufficient training and adequate resources, and whether the actor possessed the right intentions to do what the public trusts them to do. The notion of right intention or shared values included alignment with community priorities, respectful treatment, fair treatment and outcomes and no expectation of additional payments for services (see Chapter 1).

### Judges

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

Figure 6.1 Perceptions of Judges



54 Note that Ward and Village Tract Administrators have formal dispute settlement roles, as provided in the 2012 Ward or Village Tract Administration Law. See also Chapter 5 on the roles of local and township administrators.

A majority of respondents perceived judges to have up-to-date knowledge (68.3% of respondents) and believed them to be sufficiently trained (58.3%). However, almost half the respondents (47.7%) thought that judges did not have sufficient resources to carry out their responsibilities.

In relation to shared values, over half the respondents perceived that judges would not treat respondents with respect (56.7%), that judges are not aligned with community priorities (60.7%), and that judges would not come to a fair outcome if a dispute were brought before them (70.3%). Almost three quarters (74.3%) of respondents believed that judges would not be fair when resolving disputes, and more than four in five (82.0%) thought that judges would expect additional payments for their services.

## Law Officers

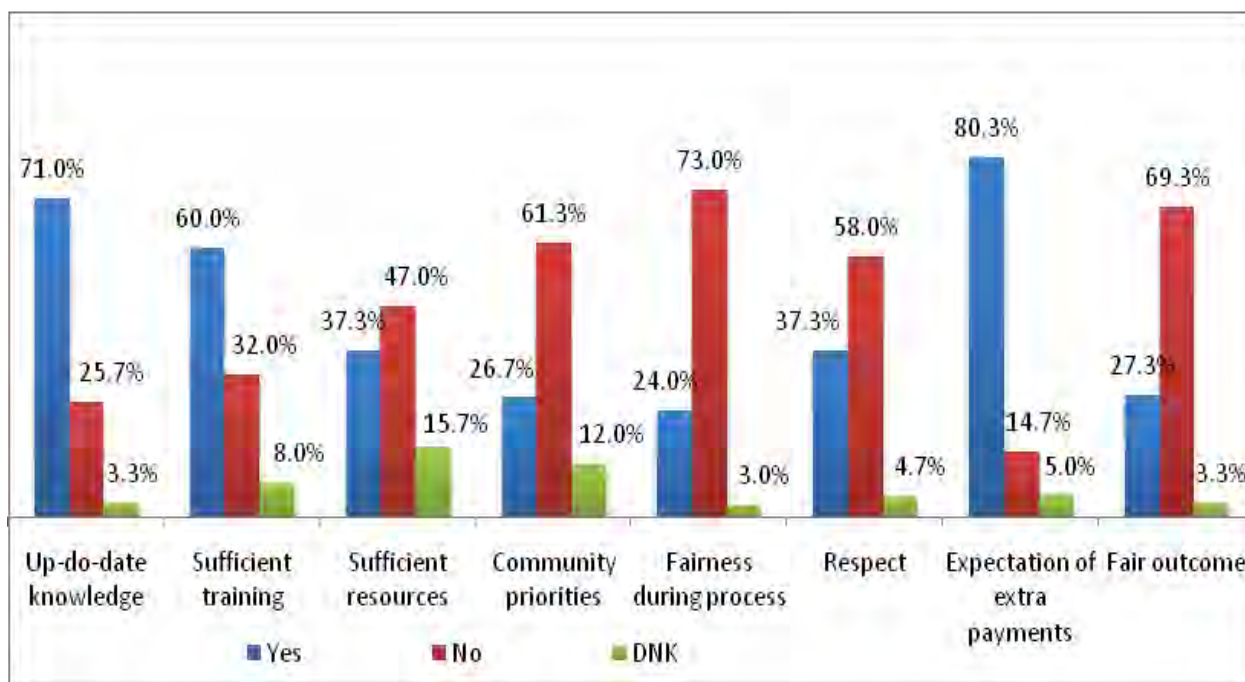
Respondents' perceptions of law officers were similar to their perceptions of judges (Figure 6.2).

Majorities of respondents perceived law officers to have up-to-date knowledge (71.0% of respondents) and to have received sufficient training (60.0%). However, nearly half the respondents (47.0%) thought that law officers did not have sufficient resources to carry out their responsibilities.

In relation to shared values, over half the respondents thought that law officers would not treat respondents with respect (58.0%), that law officers are not aligned with community priorities (61.3%) and that law officers would not come to a fair outcome if a dispute were brought before them (69.3%). Almost three quarters (73.0%) perceived that law officers would not be fair when resolving disputes and four in five (80.3%) thought that law officers would expect additional payments for their services.

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

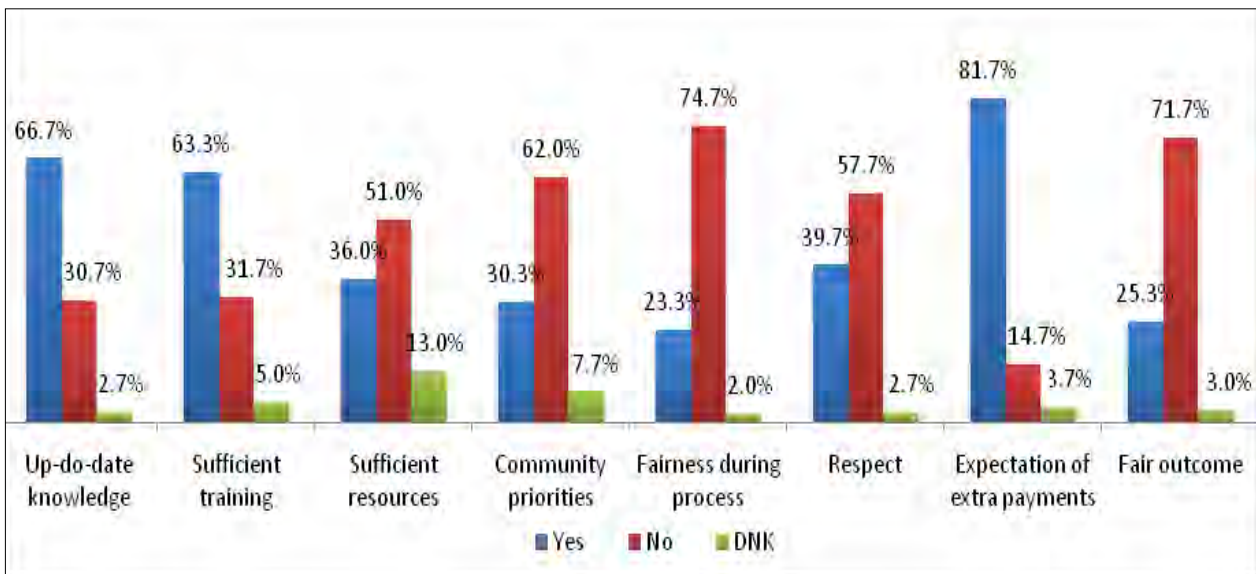
Figure 6.2 Perceptions of Law Officers



## Police

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

Figure 6.3 Perceptions of the Police



Around two thirds of respondents generally perceived the police to be competent, with up-to-date knowledge (66.7% of respondents) and sufficient training (63.3%), although fewer (51.0%) thought they had sufficient resources to carry out their responsibilities.

In relation to shared values, well over half the respondents thought that the police are not aligned with community priorities (62.0%) and would not treat respondents with respect (57.7%). A large majority (71.7%) thought that they would not come to a fair outcome if a dispute were brought before them and even more (74.7%) thought that the police would not be fair when resolving disputes. Over 80% thought that the police would expect additional payments for their services.

On the issue of police training, in interviews, police officers spoke very positively about the training they had received from various international organisations, such as the United Nations, European Union and International Committee of the Red Cross. Some spoke of having gained new understanding of their professional role in respect of human rights:

“Before [the European Union training], our mindset when we act or react was to only

take into consideration the law. We thought that if we follow the law, that it would be enough. But what we learned is that we also have to take into consideration human rights. This is new for us.”

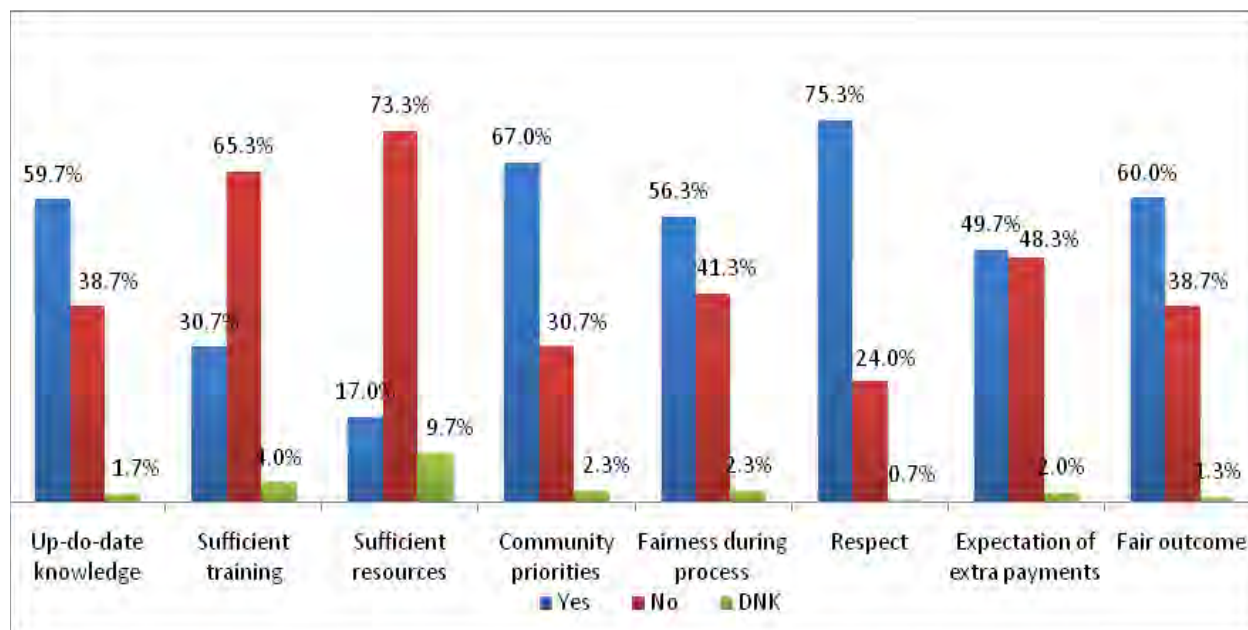
“These trainings are important. We have to respect the law but we also have to respect human rights. We have a lot to do to disseminate this idea to [officers] as other ranks.”

## Community Leaders

Respondents’ perceptions of community leaders<sup>55</sup> differed quite significantly from their perceptions of judges, law officers and the police (Figure 6.4).

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

Figure 6.4 Perceptions of Community Leaders



A clear majority of respondents believed that community leaders have up-to-date knowledge (59.7%). Almost two thirds (65.3%) thought community leaders did not have sufficient training, and almost three quarters (73.3%) thought that they did not have sufficient resources to carry out their responsibilities.

Respondents had more positive views of community leaders than of judges, law officers and the police regarding their having shared values and right intentions. A majority of respondents perceived that community leaders would be fair when resolving a dispute (56.3%) and would come to a fair outcome (60.0%). Two thirds (67.0%) of respondents believed that community leaders are aligned with community priorities, and just over three quarters (75.3%) thought that community leaders would treat them with respect. Respondents were almost evenly split between those who thought that community leaders would expect extra payments for their services (49.7%) and those who did not (48.3%).

## PUBLIC TRUST IN JUDICIAL ACTORS

A composite trust indicator was constructed (on the basis of responses represented in Figures 6.1 to 6.4) to indicate respondents' trust in judges, law officers, the police and community leaders<sup>56</sup> (Table 6.2).

Table 6.2 Trust in Judicial Actors

Actors	Trust Indicator
Judges	18.3%
Law officers	20.7%
Police	18.3%
Community leaders	25.0%

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

Judges and the police were the least trusted by respondents, and community leaders were the most trusted. The trust indicator for community leaders, 25.0%, broadly corresponds to the 19.3% of respondents who elsewhere indicated that they trust community leaders “very much” (Figure 3.2).

*In summary, a clear majority of respondents agreed that having knowledge will increase people’s access to the formal courts.*

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

*Nearly two thirds of respondents agreed that it is not acceptable for government officials to ask for additional payments. Nonetheless, 80% to 82% thought that judges, law officers and the police would expect additional payments for their services.*

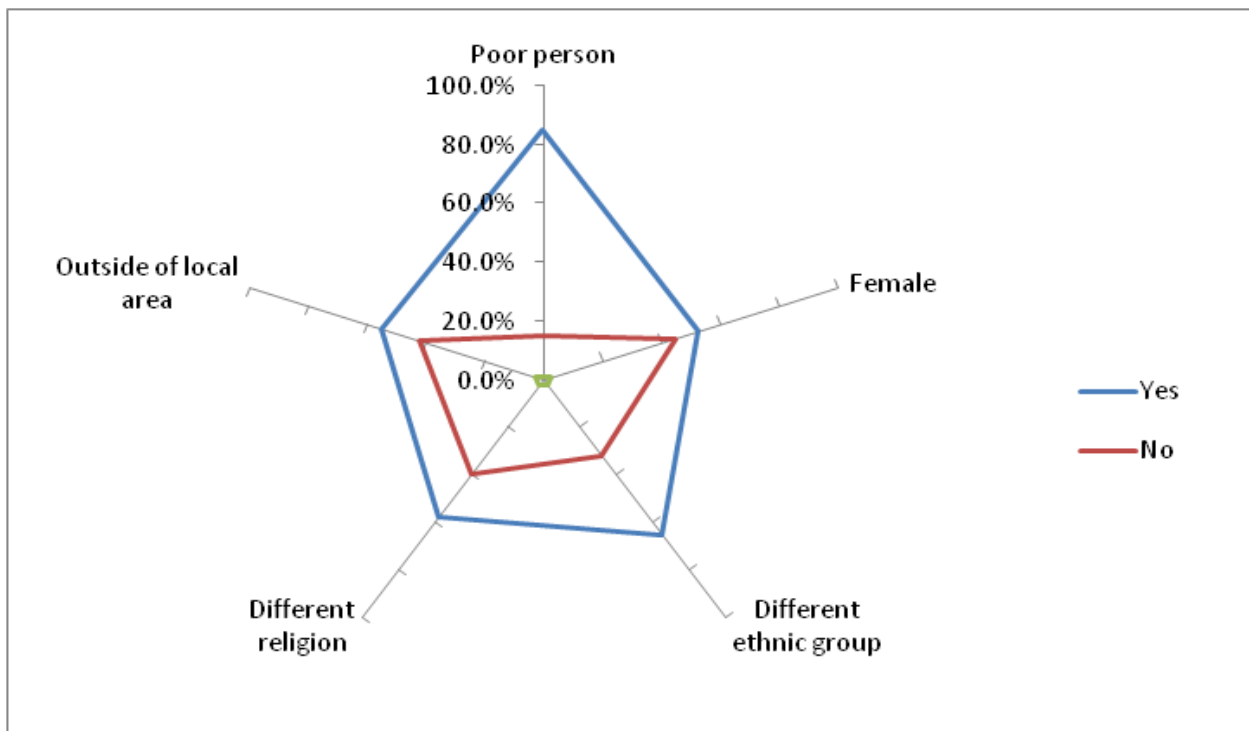
*Respondents held more positive views on community leaders. Large majorities believed that community leaders are aligned with community priorities and ascribe to shared values. Three quarters thought that community leaders would treat them with respect.*

*Overall, judges and the police were the least trusted judicial actors and community leaders the most trusted.*

## PERCEPTIONS OF UNEQUAL TREATMENT

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

Figure 6.5 Perceptions of Unequal Treatment





The characteristic of being poor was considered much more disadvantageous than any other in respect of a person's treatment by authorities when charged with a crime. A large majority (84.7%) of respondents thought that a suspect who was poor would be placed at a disadvantage.

Around two thirds of respondents thought that a suspect who was of a different ethnic group (65.7% of respondents) or a different religion (58.0%) than that of the public official would be at a disadvantage. More than half the respondents (55.0%) thought that a suspect who was from a different part of the country, and not from the local area, would be at a disadvantage, and 52.7% believed that a female suspect would be at a disadvantage. These responses suggest a prevalent perception that officials in the justice system do not act in a non-discriminatory manner.

These perceptions are consistent with those presented in Chapter 3 in relation to broader factors that determine how well a person is treated in Myanmar society.

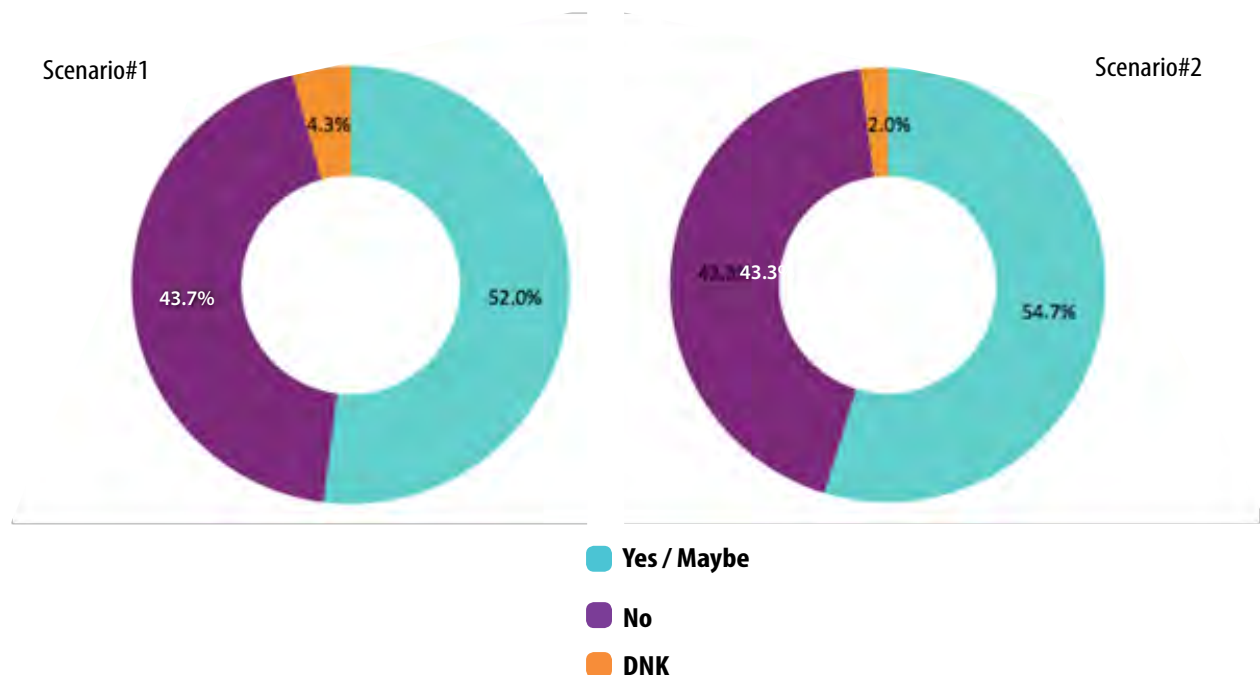
In summary, it is widely perceived that officials in the justice system do not act in a non-discriminatory manner. Respondents believe that the poor are most at risk of not being treated equally with others under the law when charged with a criminal offence.

## ATTITUDES TO ACCOUNTABILITY

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

In both scenarios, a majority of respondents would or might report the incident, while somewhat less than half the respondents would not (Figure 6.6).

Figure 6.6 Attitudes to Accountability



Those who would or might report the hypothetical incidents would take almost identical action in response to each: most would report the incident internally to the parent department. Around half the “reporting” respondents would report the first situation to the township Land Records Department (49.4%; 77 of 156), and the second situation to the township Immigration Department (48.8%; 80 of 164). The remaining “reporting” respondents would report to the village administrator (Scenario 1: 14.1%; Scenario 2: 11.0%) or the township GAD (Scenario 1: 10.3%; Scenario 2: 12.8%).

“Reporting” respondents had reasonably similar expectations of the outcomes of their reporting in each scenario. In both instances, the highest proportion of respondents would expect action to be taken against the offending official (Scenario 1: 42.9%; Scenario 2: 53.7%). Almost one quarter of respondents expected not to have to pay the sum demanded, after reporting the incident (Scenario 1: 23.1%; Scenario 2: 23.8%). Few expected that reporting the incident would have no impact on the outcome (Scenario 1: 16.0%; Scenario 2: 9.1%).

The reasons given by respondents who indicated they would not report such incidents are presented in Figure 6.6(a) in Annex II. In respect of both hypothetical scenarios, more than half these respondents identified corruption as a factor that inhibited attempts at securing accountability (Scenario 1: 51.9%, 68 of 131; Scenario 2: 52.3%, 68 of 130). Respondents recognised the entrenched nature of the problem (e.g., “This is in the hands of government officials. If I do not pay money, I will not get [registration]. So I will not report”; “If they give registration, then I will pay money. I know very well that they are reliable only when we pay money”; and “These days, one has to pay for everything. This is also an authoritarian era”).

Another reason cited by respondents for not reporting the hypothetical incidents was that they were fearful of doing so (Scenario 1: 42.7%, 56 of 131; Scenario 2: 33.0%, 43 of 130). The first

and most significant dimension of such fear was that complaining about being asked for extra payments would only lead to more problems for the complainant (e.g., “If I have money I will do the land registration, otherwise I will not. I don’t know where to report. And I am afraid I will have problems as they are the government”; “If I report there will be problems between me and the officials. So I will not report and pay the money”; and “The consequence of reporting will not be good, I think. If we ask for help the next time they will not do it”). Second, respondents were apprehensive about having to deal with formal government bureaucracy (e.g., “Going to [government] offices is complicated. I cannot carry out my business. So I will not report”; “Going to [government] offices makes [me] tired. It will also cost me more money. So I will not report”; and “I cannot afford to report. I also do not know how to talk with officials”). The third dimension of fear was generally expressed (e.g., “I dare not report as I am afraid”).

Another factor that influenced “non-reporting” respondents was their expectation that complaining would not change anything (e.g., “Actions are rarely taken when we report. So I will not report”; “I don’t know where to report and I don’t think things will be different if I report”; and “Nothing will be different if we report. So negotiation with immigration [officials] is the best option”). A general refusal to report such incidents was also evident. Respondents also demonstrated self-reliance, especially in suggesting they negotiate with the officials for lower sums. Some cited discrimination (e.g., “I am of a different race, and I don’t want further problems. So I will make the identity document by paying money as they demand.”). A small minority of respondents also identified a lack of knowledge as to what could be done, and who could provide assistance; only one respondent specifically identified a lack of knowledge about the law.

Female respondents were more likely than male respondents to say they would not report the hypothetical incidents. In respect of the

first scenario, more than half (52%) the female respondents (compared with 35.3% of male respondents) said they would not report being asked for extra payment for land registration. In respect of the second scenario, 50.0% of female respondents (compared with 36.7% of male respondents) said they would not report being asked for extra payment for renewal of identity documentation.

*In summary, a majority of respondents would or might report an incident involving corruption. Females were more likely than males not to report. Those likely to report corrupt practice expected action to be taken as a result but did not have high expectations of official accountability.*

*A majority of those unlikely to report corrupt practice cited corruption as inhibiting attempts to secure accountability. Many attributed their reluctance to report to fear that they would have to pay, apprehension about having to deal with the government bureaucracy or resignation that nothing would be done.*



## CHAPTER 7

# INTERNALLY DISPLACED RESPONDENTS

This chapter sets out findings specific to internally displaced (IDP) respondents.

It first describes the demographic, cultural and socio-economic background of the respondents, then examines levels of social trust among them. Social trust was explored in terms of: (i) respondents' perspectives on how trustworthy and how fair people generally are, and (ii) the degree to which respondents trust people other than themselves. The chapter also examines IDP respondents' perceptions of certain dimensions of justice and law.

It identifies the main disputes and concerns about justice that had arisen among IDP respondents at both the individual/household and community levels and describes respondents' involvement in them. It examines how respondents went about resolving the issues and grievances they identified as being of greatest concern to them, and how successful they were.

The chapter also reports on IDP respondents' attitudes towards the formal justice system, and their perceptions of those who have a role in the provision of justice services – judges, law officers, the police and community leaders.<sup>57</sup> It proposes an indicator of public trust in these key judicial actors and considers how IDP re-

spondents would respond if judicial officers behaved in a discriminatory manner. It concludes by reporting on their expectations and perceptions of accountability by public officials.

## RESEARCH RESPONDENTS

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

The two relevant study sites were IDP camps situated in Myitkyina and Banmaw Townships. Both were within church premises (one Baptist church and one Catholic church). A total of 100 internally displaced adult respondents (57 females and 43 males) were interviewed. The median age of the IDP respondents was 37 years; the youngest was aged 18 and the oldest 65. Four in five respondents (80.0%) were currently married, at the time of the interview.

### Cultural Characteristics

Respondents identified their ethnicity and religion.<sup>58</sup> The distribution of IDP respondents by ethnicity and sex is presented in Table 7.1.<sup>59</sup>

Table 7.1 IDP Respondents by Ethnicity and Sex

Ethnicity	Sex		TOTAL
	F	M	
Jinghpaw	22	25	47
Kachin	28	14	42
Lhaovo/Maru	2	1	3
Ghurkha	0	2	2
Shan	2	0	2
Chinese	1	0	1
Palaung	0	1	1
Rawang	1	0	1
Zaiva/Atsi	1	0	1
<b>TOTAL</b>	<b>57</b>	<b>43</b>	<b>100</b>

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

58 Via open-ended questions, with no prompting.

59 IDP respondents' answers in relation to ethnicity were not reclassified. Note also that, as mentioned before, the term "Kachin" is generally understood as an umbrella term that encompasses the six clans of Jinghpaw, Lacid/Lashi, Lhaovo/Maru, Lisu, Rawang and Zaiva/Atsi.

IDP respondents identified their religion as Buddhist and Christian.<sup>60</sup> The distribution of respondents by ethnicity and religion is presented in Table 7.2.

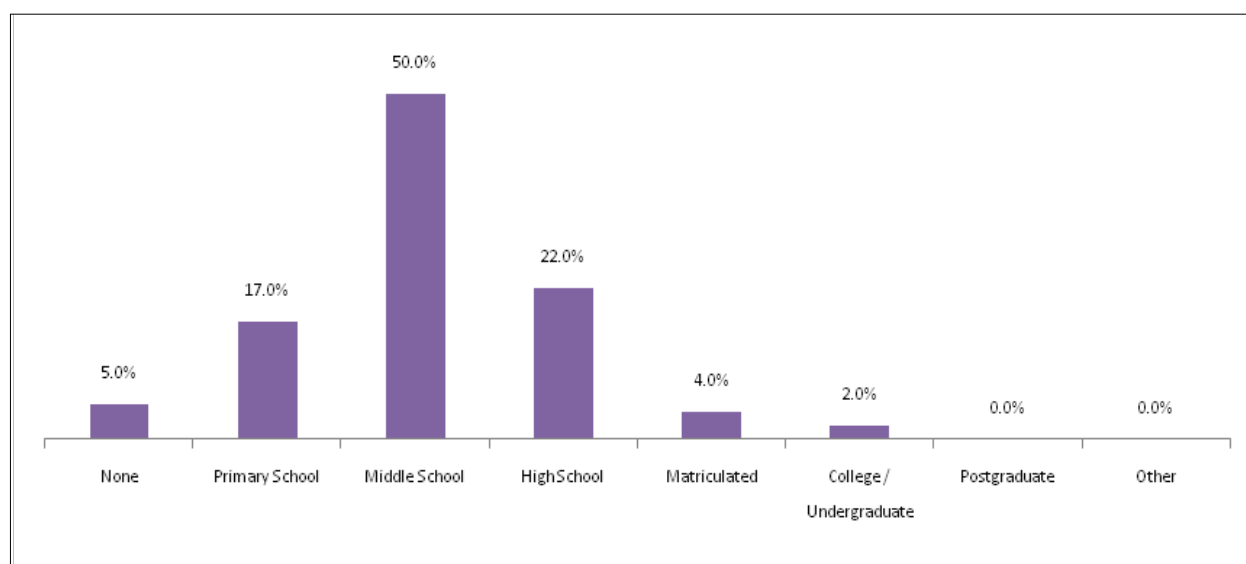
Table 7.2 IDP Respondents by Ethnicity and Religion

Ethnicity	Religion		TOTAL
	Buddhist	Christian	
Jinghpaw	0	47	47
Kachin	0	42	42
Lhaovo/Maru	0	3	3
Ghurkha	1	1	2
Shan	0	2	2
Chinese	1	0	1
Palaung/Ta'ang	1	0	1
Rawang	0	1	1
Zaiva/Atsi	0	1	1
<b>TOTAL</b>	<b>3</b>	<b>97</b>	<b>100</b>

## Education Levels and Myanmar Language Literacy

For purposes of analysis, respondents' answers regarding completed levels of education were reclassified into seven categories: None, Primary School, Middle School, High School, Matriculation, College/Undergraduate, Postgraduate and Other.<sup>61</sup> The distribution of IDP respondents across all education levels is presented in Figure 7.1.

Figure 7.1 Levels of Education (IDP Respondents)



60 Like non-IDP respondents, IDP respondents who identified as Christian generally did not elaborate further on their specific denominations.

61 Footnotes 23 to 29 explain each of these levels.

Half (50.0%) of all IDP respondents had had some level of middle school education, and about one quarter (22.0%) had had some level of high school education. Only small minorities had matriculated from high school (4.0%) or had some tertiary education at undergraduate level (2.0%).

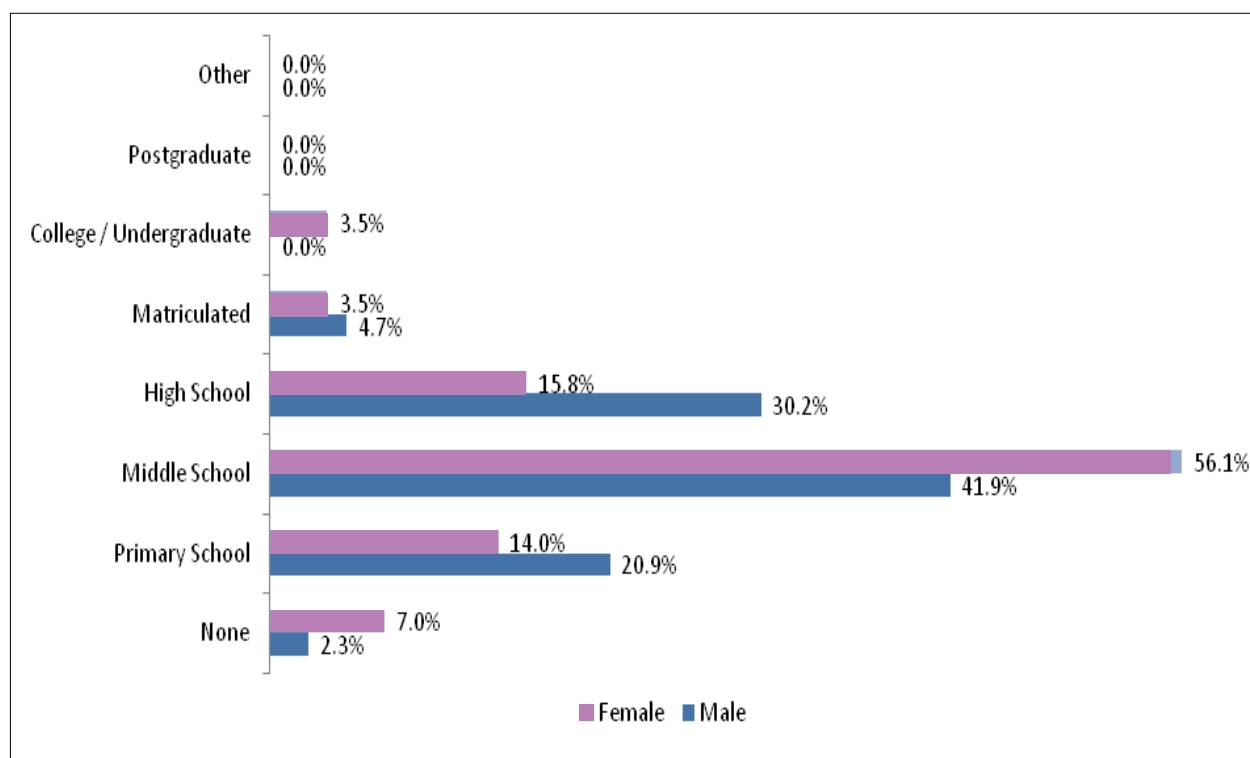
A higher proportion of female (7.0%) than male (2.3%) respondents had had no formal or non-formal education. More males than females had had some level of primary education, whereas more females than males had had some level of middle school education. Males were also represented more strongly among those who had had secondary education: more males than females had had some level of high school education or had matriculated from high school. However, females were represented at college/undergraduate level, whereas males were not (Figure 7.1(a)).

IDP respondents tended to be represented at the lower levels of education, in comparison with non-IDP respondents. A higher proportion of IDP than non-IDP respondents had had some level of primary and middle school education. However, this pattern reversed at higher levels, where higher proportions of non-IDP than IDP respondents had had some level of high school education, matriculated from high school or had some level of tertiary education (Figure 7.1(b), Annex II).

Respondents indicated whether they were able to read a newspaper and write a letter in the Myanmar language. More than three quarters (78.0%) of IDP respondents reported that they were able to both read and write. Almost one in 10 (9.0%) indicated that they were unable to either read or write in the Myanmar language.

Females were more likely than males to say they had Myanmar language literacy in both reading

Figure 7.1(a) Levels of Education by Sex (IDP Respondents)



and writing, but they were also more likely than males to have neither (Figure 7.1(c), Annex II).

A lower proportion of IDP respondents than non-IDP respondents were able to both read and write in Myanmar language. At the same time, a higher proportion of IDP respondents than non-IDP respondents reported not to have any Myanmar language literacy (Figure 7.1(d), Annex II).

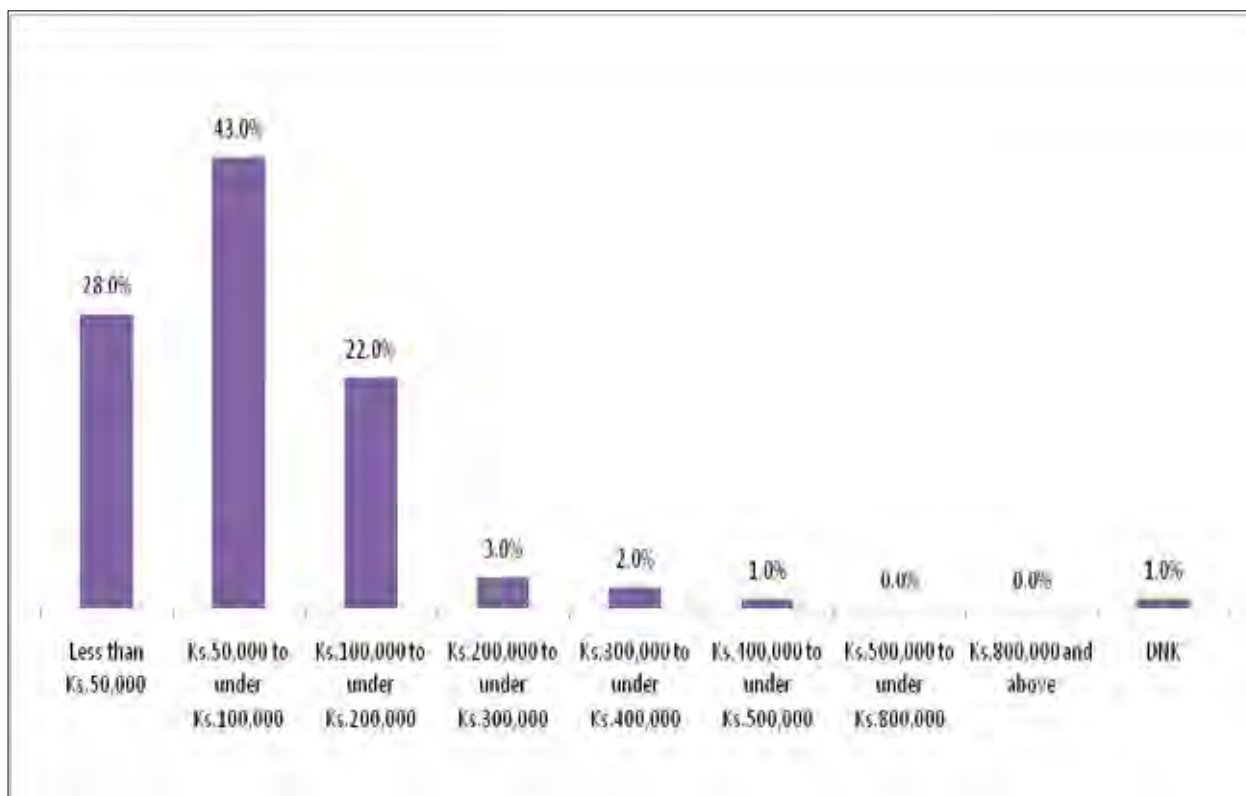
## Persons With Disability

Just over one in five (21.0%) IDP respondents reported having a person with at least one type of disability within their household. These included physical, visual, hearing, speech and/or mental disabilities or impairments. This figure is double that of non-IDP respondents.

## Household Income and Assets

Respondents' approximate monthly household income is presented in Figure 7.2.

Figure 7.2 Monthly Household Income Level (IDP Respondents)

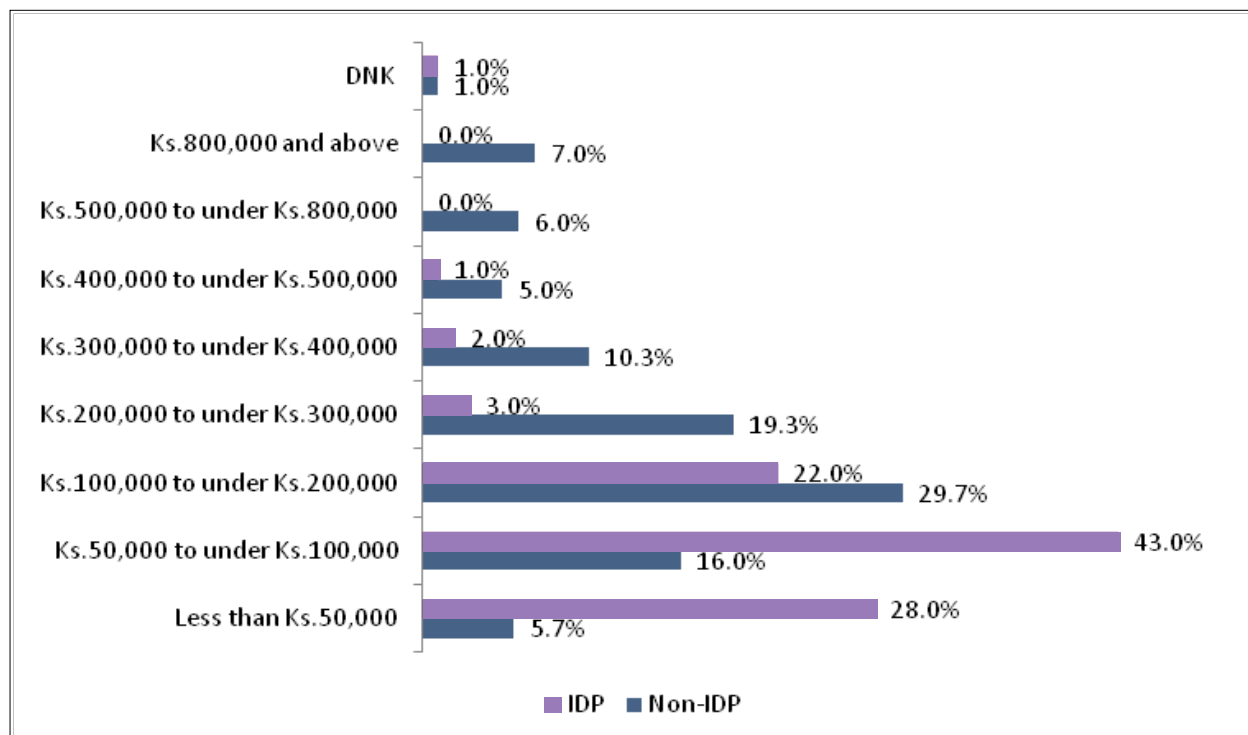


More than two thirds (71.0%) of the IDP households surveyed had less than Ks.100,000 income per month, including over one quarter (28.0%) with less than Ks.50,000 per month. Less than one quarter (22.0%) had an approximate household income of between Ks.100,000 and Ks.200,000 per month.

There was a much higher proportion of IDP households at the lowest household income levels than non-IDP households (Figure 7.2(a)).



Figure 7.2(a) Monthly Household Income Level (IDP and Non-IDP Respondents)



The primary sources of IDP respondents’ household income were casual labour (45.0% of IDP respondents), daily wages (22.0%) and agriculture (10.0%). More than two thirds (70.0%) of IDP respondents reported not having secondary sources of household income.

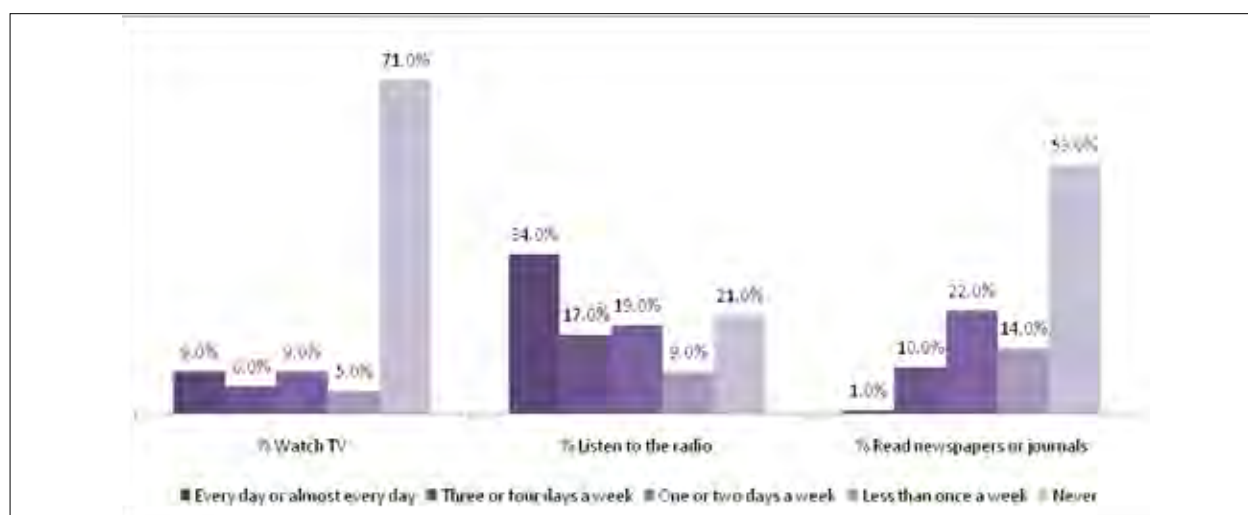
IDP respondents reported possessing only four of 15 given household assets: motorcycles/tuktuks (49.0% of IDP respondents), mobile phones (49.0%), radios (43.0%) and television sets (33.0%). Almost one in five (18.0%) indicat-

ed that they did not own any of the 15 assets. A comparison of household assets owned by IDP and non-IDP respondents is presented in Figure 7.2(b) in Annex II.

### Mass Media Exposure and Access to Information

Respondents indicated how often in a week they watched television, listened to the radio and read newspapers or journals (Figure 7.3).

Figure 7.3 Mass Media Exposure (IDP Respondents)



On a weekly basis, more than two thirds (71.0%) of IDP respondents never watched television and more than half (53.0%) never read newspapers or journals.

Just over half (51.0%) of IDP respondents listened to the radio at least three days a week, including just over one third (34.0%) who listened to the radio every day or almost every day.

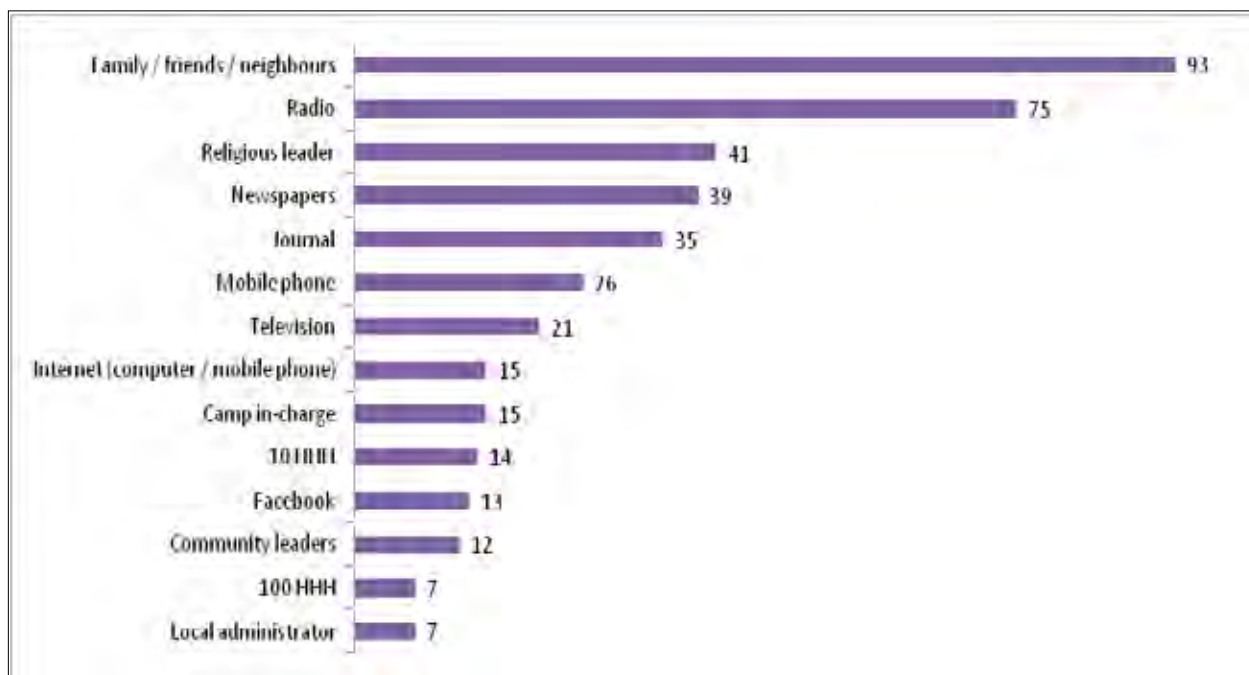
The most common source of information for IDP respondents was family/friends/neighbours (93 respondents). 75 respondents relied on radio. Other sources of information were religious leaders (41), newspapers (39), journals (35), mobile phones (26) and television(21)(Figure 7.3(a)).

(35), mobile phones (26) and television (21) (Figure 7.3(a)).

Male respondents tended to have more diversified sources of information than female respondents (Figure 7.3(b), Annex II). Significantly higher proportions of males than females relied on religious leaders, mobile phones and the Internet as sources of information.

IDP respondents identified two primary languages in which they obtained information about developments in the country:<sup>62</sup> more than half (58.0%) reported that this was in Myanmar, and the remaining 42.0% that it was in Jinghpaw.<sup>63</sup> This pattern is different to that of the main languages spoken in respondents'

Figure 7.3(a) Access to Information (IDP Respondents)



The most common source of information for IDP respondents was family/friends/neighbours (93 respondents). 75 respondents relied on radio. Other sources of information were religious leaders (41), newspapers (39), journals

households: a large majority (94.0%) reported speaking Jinghpaw.<sup>64</sup> Small minorities reported speaking other languages: Myanmar (3.0%), Lhaovo (2.0%) and Chinese (1.0%) (Figure 7.3(c), Annex II).

62 Via an open-ended question, with no prompting.

63 This figure (42.0%) includes 27.0% of respondents who reported receiving information in "Kachin" language.

64 This figure (94.0%) includes 52.0% of respondents who reported "Kachin" as the main language spoken within their household.

## Access to Services

IDP respondents were significantly less likely than non-IDP respondents to be well informed about accessing local services and to have visited them in order to get assistance.

Almost half (47.0%) of all IDP respondents stated that they did not know how much time was required to travel from their place of residence to their ward and village tract administrators. Over one third (37.0%) estimated that it would take them 15 minutes or less, and the remaining 16.0% indicated that it would require up to half an hour. With respect to cost, the 47.0% who did not know the distance to their local administrators also stated that they did not know how much it would cost to travel there. One quarter of respondents indicated that such a visit would be cost free, and the remaining respondents were evenly split between those who thought a visit would cost Ks.500 or less and those who thought a visit would cost more than Ks.500 (14% of IDP respondents respectively). A very large majority (90.0%) of IDP respondents stated that they had never visited their ward or village tract administration office for help over the course of a year and only a few (7.0%) estimated they had visited between one and five times.

Almost two in five (38.0%) IDP respondents stated that they did not know how much time would be required to reach the police post closest to their residence. One third (33.0%) estimated that it would take them 15 minutes or less and about two in five (22.0%) thought it would require up to half an hour. With respect to cost, the 38.0% of respondents who did not know the distance to the nearest police post also stated that they did not know how much it would cost to travel there. Over one quarter (29.0%) of IDP respondents estimated that visiting the local police post would incur a cost of more than Ks.500, 18.0% thought it would be cost free and 15.0% thought it would cost Ks.500 or less. A large majority (90.0%) of IDP respondents stated that they had never visited

the local police post for help over the course of a year and a few (8.0%) estimated having visited between one and five times.

More than four in five (82.0%) IDP respondents estimated that it would require 15 minutes or less to access the religious leader closest to their residence, and another 10.0% estimated that it would take up to half an hour. One respondent stated that it would take more than an hour, and five indicated that they did not know how much time would be required. More than three quarters (77.0%) of respondents reported that visiting their religious leaders would be cost free, and about one in ten (11.0%) estimated it would incur a cost of more than Ks.500. Two thirds (67.0%) of respondents stated that they never visited their nearest religious leader for help over the course of a year and under one third (31.0%) estimated having visited between one and five times.

In terms of accessing services at the nearest township, a majority (58.0%) of IDP respondents stated that they did not know how much time would be required to visit the township GAD. Fewer indicated that they did not know how much time would be required to visit the township court (50.0%) and the township police (47.0%). About one quarter estimated that such a visit would take up to half an hour (township GAD: 23.0%; township police: 25.0%; township court: 28.0%) and smaller proportions estimated it would take 15 minutes or less (township GAD: 15.0%; township police: 23.0%; township court: 17.0%). The same proportions of IDP respondents who did not know the distances to services at the township also stated that they did not know what such travel would cost. About one third of IDP respondents estimated that visiting the township GAD (32.0%), the township police (34.0%) and the township court (35.0%) would cost more than Ks.500. Very significant majorities of IDP respondents reported having never visited the township GAD (94.0%), the township police (95.0%) and the township court (96.0%) for help over the course of a year.

## Main Sources of Support

Respondents were also asked from whom they could seek help when required. The highest proportion of IDP respondents (32.0%) reported that they had no one from whom they could receive assistance, more than one quarter (26.0%) identified their families and relatives and just over one in five (21.0%) identified their friends and colleagues. One in ten (10.0%) nominated their neighbours.

A large majority (88.2%; 60 of 68) of the IDP respondents who did identify having a source or sources of assistance indicated that those sources were not affiliated to a political party and a majority (58.8%; 40 of 68) reported that their sources of support were people of relatively higher wealth.

*In summary, the 100 IDP respondents were resident in two IDP camps on church premises. The vast majority were Jinghpaw or Kachin Christians. In comparison with other respondents, IDP respondents were more heavily represented at lower levels of education, less likely to be literate in Myanmar, twice as likely to have a person with a disability within their household, much more like-*

*ly to be in the lowest household income brackets and much less likely to possess household assets. They primarily relied on family, friends and neighbours, or the radio, to access information.*

*Almost one in three IDP respondents reported that they had no one from whom they could receive assistance if needed. IDP respondents were significantly less likely than non-IDP respondents to have accessed local services in order to get assistance.*

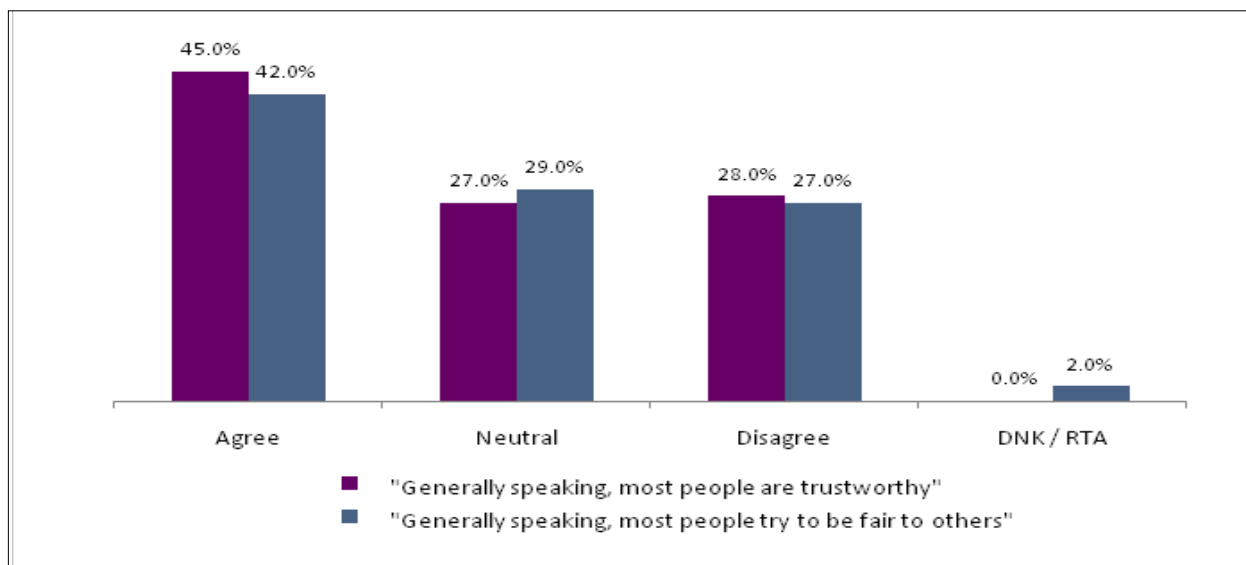
## PERCEPTIONS OF JUSTICE AND LAW

This section examines IDP respondents' perceptions of certain dimensions of justice and law. This provides some context to the study's enquiry into why and how people seek access to justice (as outlined in the following sections).

### Social Trust

Respondents indicated their perceptions of two characteristics associated with social value: trustworthiness and fairness (Figure 7.4).<sup>65</sup>

Figure 7.4 Social Trust: Trustworthiness and Fairness (IDP Respondents)



<sup>65</sup> Respondents were asked the extent to which they agreed or disagreed with two statements on trustworthiness and fairness. Their responses were recorded on a seven-point Likert scale: "Agree strongly"; "Agree somewhat"; "Agree a little"; "Neither agree nor disagree"; "Disagree a little"; "Disagree somewhat"; "Disagree strongly". To simplify analysis, the responses "Agree strongly", "Agree somewhat" and "Agree a little" are combined as "Agree", and the responses "Disagree a little", "Disagree somewhat", and "Disagree strongly" are combined as "Disagree".

Rather low levels of social trust were revealed among IDP respondents. Less than half agreed that “Generally speaking, most people are trustworthy” (45.0%) and that “Generally speaking, most people try to be fair to others” (42.0%). Over one quarter did not agree that people can generally be trusted (28.0%), and that, generally speaking, most people try to be fair to others (27.0%).

Male respondents were significantly more likely than female respondents to agree to both statements. However, female respondents were more likely than males to be neutral (Figure 7.5(a), Annex II).

Respondents also indicated the extent to which they trust or distrust various categories of people: family and relatives; neighbours, friends and people within the community; community leaders; people outside the community; people of a different religion; and people of a different ethnicity (Figure 7.5).<sup>66</sup>

IDP respondents indicated that, among these categories of people, they trusted family and relatives the most and people from outside the community the least.

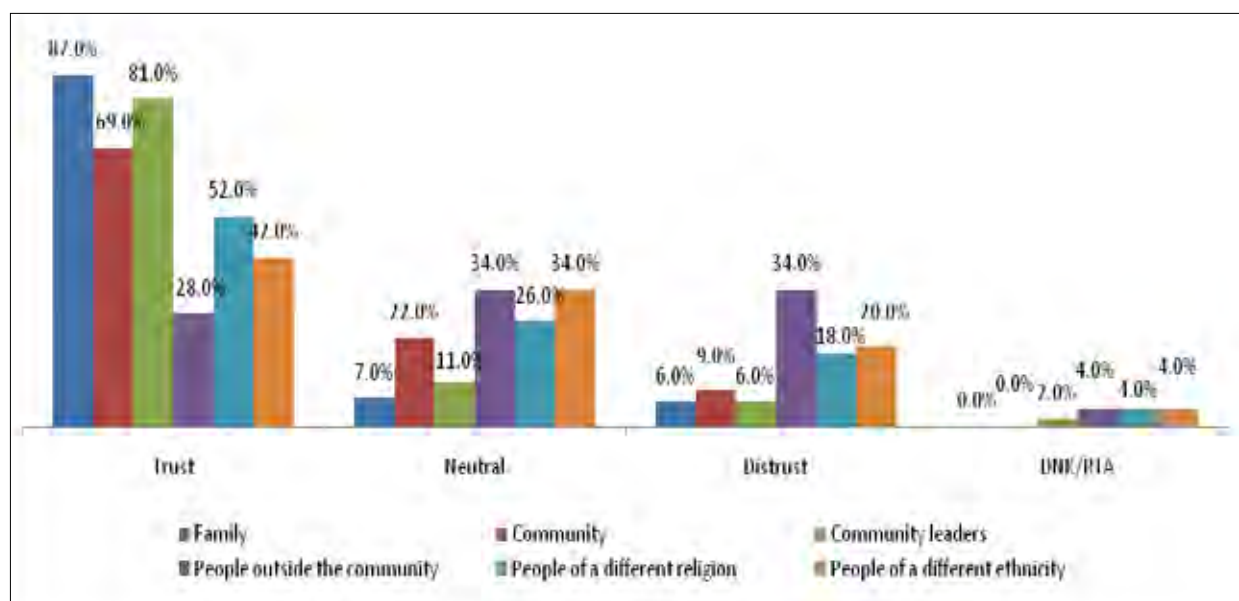
Compared with male respondents, female respondents were less likely to trust and more likely to distrust all categories of people, with the exception of family and relatives. Higher proportions of females than males both trusted and distrusted family and relatives (Figure 7.5(a), Annex II).

## Perceptions of Justice

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

- informal vs. formal pathways to justice;
- the principle of equality, and the State’s responsibility to protect and defend human rights;
- the right to seek remedy;
- private vs. public authority;
- transitional justice (in a conflict-affected society);
- due process;
- gender equality;
- individual rights in relation to communal harmony and cohesion (Table 7.3).

Figure 7.5 Social Trust: Trust in Others (IDP Respondents)



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

Table 7.3 Perceptions of Justice (IDP Respondents)

Dimensions of Justice	Statements	Agree*
FORMAL VS. INFORMAL	(a) Some disputes are best settled in the courts.	25.0%
	(b) It is better for most disputes to be settled within the community.	<b>63.0%</b>
EQUALITY	(a) Every person deserves equal care and concern by the government regardless of religion or ethnicity.	<b>89.0%</b>
	(b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups.	10.0%
FATE VS. REMEDY	(a) Injustices can befall people, and there is nothing they can do about it because it is their fate.	10.0%
	(b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome.	<b>89.0%</b>
PRIVATE VS. PUBLIC	(a) Matters within a family are private and internal to it, and a married man has complete authority over his spouse and children.	38.0%
	(b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others.	<b>44.0%</b>
TRANSITIONAL JUSTICE	(a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar.	23.0%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	<b>72.0%</b>
PROCESS VS. OUTCOME	(a) Being fairly treated throughout a process is more important than obtaining a favourable outcome.	<b>87.0%</b>
	(b) Obtaining a favourable outcome is more important than being treated fairly during a process.	<b>12.0%</b>
GENDER	(a) Men and women have equal value, but women have greater responsibility to care about culture and tradition.	5.0%
	(b) Men and women have equal value, and both have equal responsibility to care about culture and tradition.	<b>93.0%</b>
INDIVIDUAL VS. COMMUNITY	(a) Individual rights must be as respected as communal harmony.	<b>74.0%</b>
	(b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised.	20.0%

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

Very large majorities of IDP respondents agreed that men and women have equal value and equal responsibility for caring about culture and tradition (93.0%), that everyone deserves equal care and concern by the government regardless of religion or ethnicity (89.0%), that people are able to seek help to obtain a remedy and ensure a fair outcome following an injustice (89.0%) and that procedural fairness is more important than obtaining a favourable outcome (87.0%).

Almost three quarters of respondents thought that individual rights must be as respected as communal harmony (74.0%) and that transitional justice is important in building a new Myanmar (72.0%).

Regarding formal and informal methods of dispute settlement, a clear majority (63.0%) of IDP respondents expressed a preference for most disputes to be settled locally within the community, while one quarter (25.0%) thought that some disputes are best settled in court. Over one in ten (12.0%) respondents agreed with both statements.

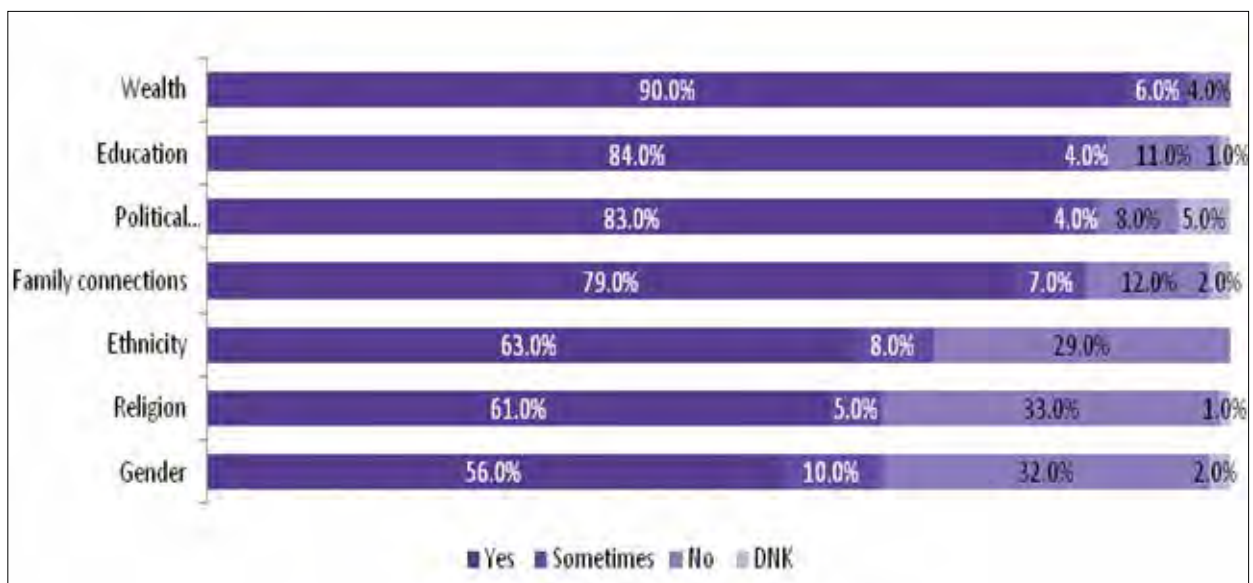
In relation to private and public dimensions of justice, less than half (44.0%) of IDP respon-

dents agreed that a community sometimes has the responsibility to intervene in others' household matters; however, a slightly lower proportion (38.0%) thought that matters within a family are private, and that a married man has complete authority over his family. Under one fifth (17.0%) of respondents expressed agreement with both views.

Although the views of female and male IDP respondents were broadly consistent, they diverged with respect to the private/public dimension of justice. The largest proportion of female respondents (47.4%) agreed that a community sometimes has the responsibility in certain circumstances to intervene in others' household matters, whereas the largest proportion of male respondents (44.2%) thought that matters within the family are private, and that a married man has complete authority over his family (Table 7.3(a), Annex II).

Respondents also indicated what they thought about factors that might be considered to determine how well a person is treated in Myanmar society: education, wealth, ethnicity, gender, religion, family connections and political connections (Figure 7.6).

Figure 7.6 Treatment Factors (IDP Respondents)



An overwhelming majority (90.0%) of IDP respondents believed that wealth determined how well a person is treated in Myanmar society. Large majorities also believed that of education (84.0%), political connections (83.0%) and family connections (79.0%). Clear majorities also cited ethnicity (63.0%), religion (61.0%) and gender (56.0%) as determining how well a person is treated.

These responses differ markedly from those of non-IDP respondents, particularly regarding wealth (cited by 90% of IDP and 82% of non-IDP respondents) and political connections (cited by 83.0% of IDP and 67.5% of non-IDP respondents). IDP respondents were less likely than non-IDP respondents to cite ethnicity and religion and more likely to cite gender as determining factors.

### Perceptions of Law

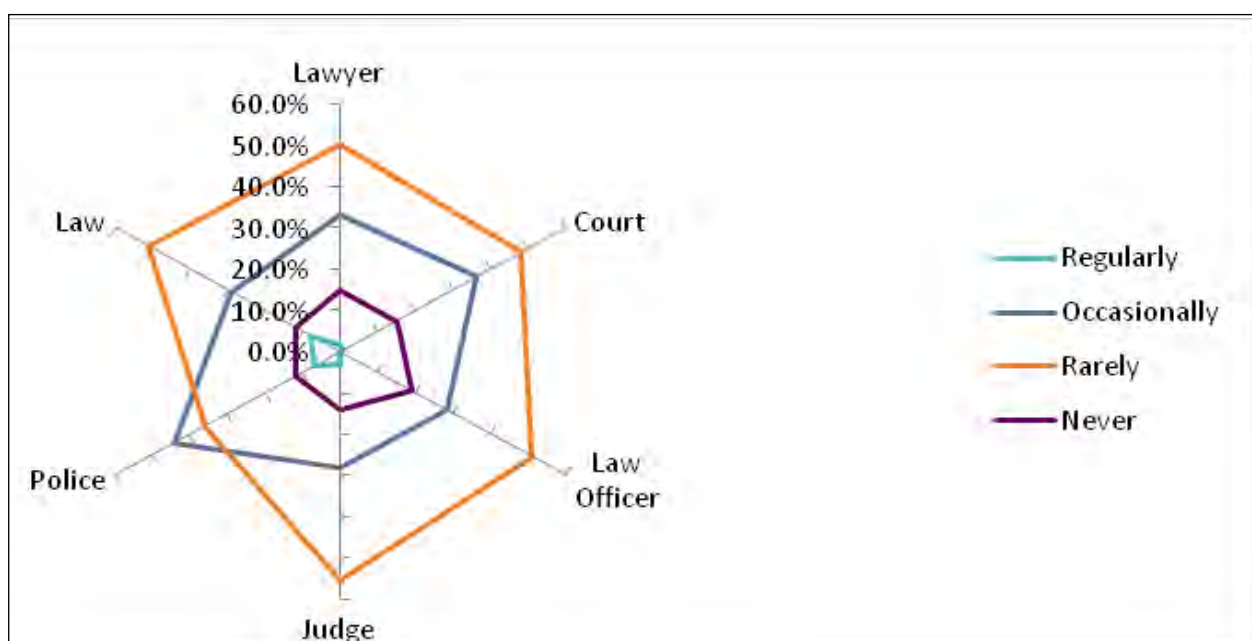
While the study did not seek to test respondents' legal knowledge, it sought to understand their perceptions of how the justice system functions, or how it would work in given circumstances. Respondents indicated how often

they heard or used certain words – “law”, “police”, “judge”, “law officer”, “court” and “lawyer” – in day-to-day conversation. The results (Figure 7.7) give some indication of IDP respondents' relative engagement with the formal justice system (on this basis). They also illustrate “gaps”, to the extent that they exist, between provisions of the law in Myanmar and perceived reality.

Large majorities of IDP respondents reported that they rarely, or had never, heard or used the words “law officer” (70.0%), “judge” (69.0%), “lawyer” (65.0%), “court” (63.0%) and “law” (63.0%) in day-to-day conversation. Just over half (51.0%) reported regular or occasional use of the word “police” in daily conversation.

Fewer than 10% of males, and even lower proportions of females, heard or used any of these words on a regular basis. With the exception of the word “police”, female respondents reported lower levels of exposure overall to these words than did male respondents (Figure 7.7(a), Annex II). IDP respondents reported consistently lower, and sometimes considerably lower, levels of exposure to all six words than did non-IDP respondents (Figure 7.7 (b), Annex II).

Figure 7.7 Words in Daily Conversation (IDP Respondents)





Respondents then indicated their understanding of three propositions regarding particular legal provisions (as expressed in a series of given statements) (Table 7.4). This cast some light on their perceptions of the law and how it operates in Myanmar. However, it is important to note that it is not possible on the basis of the results to disentangle respondents' (presumed) lack of legal knowledge from a lack of implementation of the law.

children working in teashops that has its causes in poverty. The 1951 Shops and Establishments Act (s. 8) stipulates that “no person who has not attained the age of 13 years shall be required to work in any shop, commercial establishment or establishment for public entertainment.” Less than one third of respondents (32.0%) thought that it is illegal for children under 12 years of age to be working in teashops. Notably, 18% of respondents indicated either both responses

Table 7.4 Perceptions of Law (IDP Respondents)

Subject	Statements	Agree*
CHILD LABOUR	(a) In Myanmar, it is illegal for children under 12 years of age to be working in teashops.	32.0%
	(b) In Myanmar, children who are 12 and above can choose and decide to work in teashops.	47.0%
EQUALITY BEFORE THE LAW	(a) In Myanmar, every person has equal rights before the law.	23.0%
	(b) In Myanmar, not all people have equal rights before the law.	74.0%
VIOLENCE AGAINST WOMEN	(a) According to national law, only when a woman has experienced physical violence can she report it to the police.	60.0%
	(b) According to national law, women who receive threats to their safety can also report to the police.	33.3%
LAND RIGHTS	(c) When pursuing a land claim, the strongest claim is an official paper land certificate.	69.0%
	(d) When pursuing a land claim, an official paper land certificate is not regarded as a stronger claim than a community-recognised ancestral land claim.	24.0%

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

Perhaps the most interesting result was on the issue of child labour, and it reflected some confusion. Just under half (47.0%) the respondents agreed that children aged 12 or older can “choose and decide” to work in teashops. This perception reflects a common phenomenon of

(12%) or neither response (6.0%), or did not know or refused to answer (3.0%).

Almost three quarters (74%) of the respondents perceived that not all people have equal rights before the law in Myanmar. In this regard, the

2008 Constitution contains potentially contradictory provisions: on the one hand, the rights of equality, liberty and justice are guaranteed only to citizens (Art. 21(a)), and on the other, equal rights before the law and equal legal protection are guaranteed to any person in the Union (Art. 347).

In relation to violence against women, almost twice as many respondents (60.0%) believed that a woman could only report to the police when she has experienced physical violence than agreed that women who receive threats to their safety can report to the police (33.3%).<sup>67</sup>

More than two thirds (69.0%) of respondents believed that an official paper land certificate is the strongest piece of ownership documentation to have when pursuing a land claim; less than one quarter (24.0%) believed that a community-recognised ancestral land claim provides an equally strong claim.

*In summary, IDP respondents had rather low levels of social trust. Like other respondents, they trusted family and relatives the most and people from outside the community the least. Very large majorities agreed that men and women have equal value and responsibility for caring about culture and tradition, that everyone deserves equal care and concern by the government regardless of religion or ethnicity, that people are able to seek help to obtain a remedy and fair outcome following an injustice, and that procedural fairness is more important than obtaining a favourable outcome. A clear majority preferred most disputes to be settled locally.*

*An overwhelming majority of IDP respondents (higher than that of other respondents) believed that wealth determined how well a person is treated in Myanmar society, and large majorities also believed that political connections (significantly higher than that of other respondents) and education were determining factors.*

*Like other respondents, IDP respondents were more familiar with the police than any other judicial actors. Almost three quarters perceived that not all people have equal rights before the law in Myanmar.*

## DISPUTES AND CONCERNS ABOUT JUSTICE

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

As reported above, on the basis of everyday conversation, IDP respondents are not engaged with the formal justice system, and they are generally unconnected with the key judicial actors. How, then, do they go about seeking resolution to their disputes and concerns about justice?

This section identifies the main disputes and concerns about justice that had arisen at both the individual/household and community levels for IDP respondents and describes the respondents' involvement in them. It examines how respondents went about resolving the issues and grievances they identified as being of greatest concern to them, and how successful they were.

### Individual/Household Level

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

#### **Types of Disputes**

Just over one fifth (22) of the 100 IDP respondents identified having experienced at least one dispute in the course of the previous 12 months. These disputes related to a wide range of matters, including 22 from a given list<sup>68</sup> plus

67 Penal Code, 1861, s. 503.

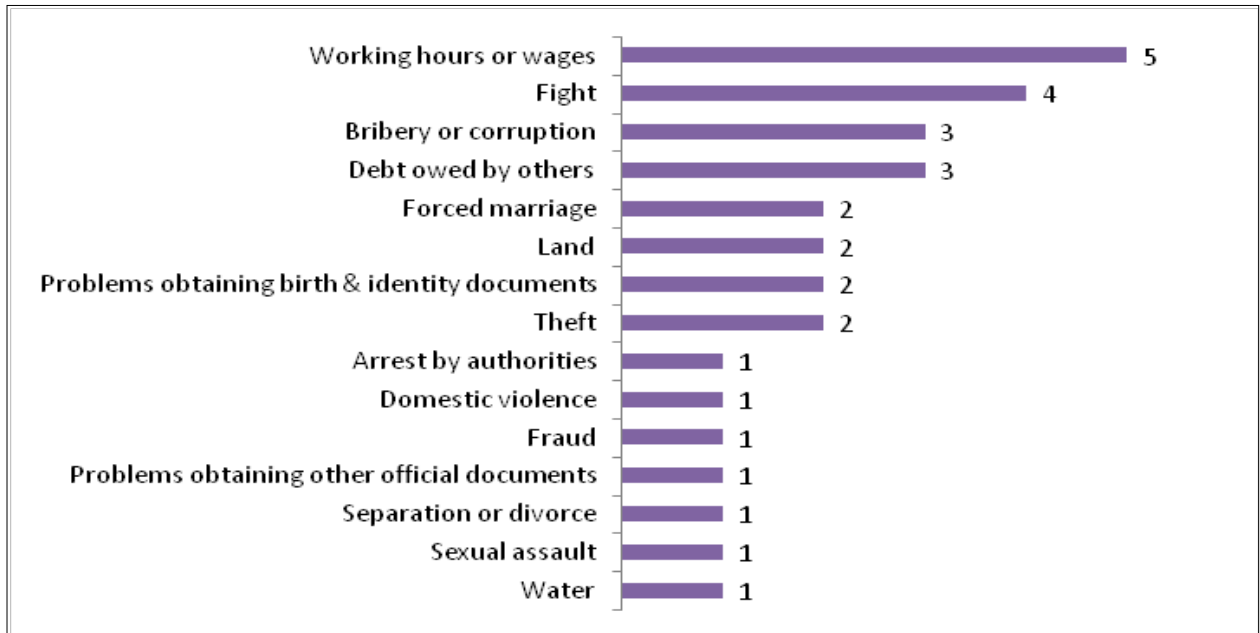
68 Natural resources: land, water, forestry (including forest products), fishing rights; Administrative issues: problems obtaining birth and identity documentation, land registration certificate, other official documents; Family disputes: separation or divorce, child guardianship, inheritance, domestic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

forced marriage, fraud and theft.

The most common disputes related to working hours or wages (5 respondents) and fights (4 respondents). Disputes related to debts owed

by others, and bribery or corruption, were each reported by three respondents. Disputes over forced marriage, land, problems obtaining birth and identity documentation and theft were reported by two respondents each (Figure 7.9).

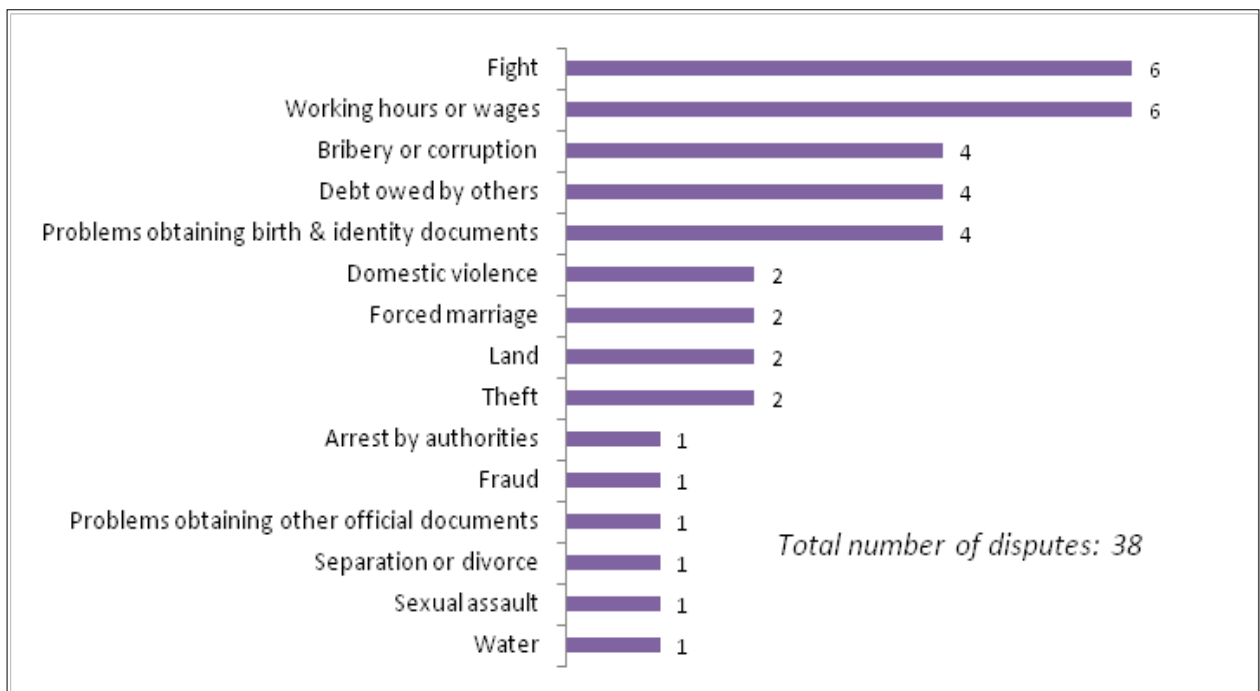
Figure 7.8 Types of Disputes (IDP Respondents)



### Incidence of Disputes

These 22 respondents reported having been involved in 38 disputes (Figure 7.9).

Figure 7.9 Incidence of Disputes (IDP Respondents)



Disputes over working hours or wages and fights occurred most commonly (6 each), followed by disputes over bribery or corruption, debt owed by others and problems obtaining birth and identity documentation (4 disputes each). These five most frequent types of dispute together accounted for 24 of the 38 disputes. Two cases each of domestic violence, forced marriage, land-related dispute and theft were also reported, bringing the total to 32 multiple incidence disputes.

Of these 32 disputes, 14 resulted in financial loss (across all types of dispute except forced marriage). There were three instances of injury but no deaths or property damage reported. In three quarters (24 of 32) of cases, the other party to the dispute was a private actor (e.g., a family member, an employer and a business) and the remaining eight problems arose with people who exercise some form of state function or who have a role in the provision of public services.

All the disputes relating to working hours or wages and all the fights appear to be in the nature of private disputes. The majority of labour disputes involved people from other communities or brokers. Fights involved either individuals from within respondents' own communities or a group outside their community.

All disputes over debts owed by others were private disputes with individuals from either the respondents' own community or other communities. Interestingly, seven of the eight disputes concerning bribery or corruption or problems obtaining birth and identity documentation were with a midwife/birth attendant/nurse.

Respondents reported the problem of domestic violence in relation to family members and the problem of forced marriage (see below) with individuals from within their own communities.

One of two reported land-related disputes was a private dispute with a person from another community, and the other a dispute with the clerk at the local administration office. With respect to theft, respondents were unable to identify with whom the two disputes occurred.

### Priority Concerns About Justice

The 22 respondents who had been involved in a dispute during the previous 12 months indicated which they considered to be the most important (Figure 7.10).<sup>69</sup> This information was used to track the settlement trajectories of the disputes causing the greatest concern (Figure 7.11). Fights were considered the most important, followed by disputes over working hours or wages, debt owed by others, forced marriage and land-related disputes.

Figure 7.10 Priority Concerns About Justice (IDP Respondents)



69 For the 15 respondents who identified only one dispute experienced over the previous 12 months, the single dispute was recorded as their greatest concern.

## Thematic Issues

A number of thematic issues arose from respondents' reports of the disputes they had been involved in: discrimination; conflict-related issues; the prospect of return (to home villages) and/or resettlement; the relationship with the host community; and sexual and gender-based violence (SGBV). These issues are strongly associated with the priority concerns identified above. With the exception of SGBV, these concerns may be regarded as being sufficiently significant, from the respondents' perspectives, to have become a community issue or problem, rather than isolated incidents that affected only individuals and/or households.

### Discrimination

IDP respondents in both study sites reported facing various forms of discrimination.

First, IDP respondents described facing labour exploitation in the form of:

- Lower wages: Respondents in one camp reported that IDP labourers were paid Ks.5,000/day, without a meal, whereas non-IDP labourers were paid Ks.6,000 to Ks.7,000/day, including a meal. In another camp, respondents reported that IDP labourers were paid Ks.8,000/day, while non-IDP labourers were paid Ks.10,000/day.
- Extended work hours, without overtime payment: In both study sites, respondents reported regularly being forced to work one to two extra hours every day, without being paid any additional compensation. In one instance, respondents described having to work throughout the night until 6am the next morning.
- Partial payment of wages: In one camp, respondents reported receiving Ks.5,000/day despite an agreement that they would receive Ks.6,000/day.

- Delayed wage payments: Some respondents also described delayed payment of their wages, at times by up to a month.
- Hidden fees: Some respondents described being charged additional fees for transportation to work sites.

Female IDP respondents from both camps also reported receiving lower wages (Ks.500 to Ks.1,000 less each day) than male labourers, despite working the same number of hours and performing the same type of activity.

IDP respondents reported having no avenues for redress in cases of labour exploitation and wage discrimination, in part because they have very limited economic opportunities. A respondent from one study site explained:

"We are exploited because we are from the IDP camp, and they know we need jobs. We dare not report [wage discrimination] to the authorities or the camp-in-charge because we are worried that the brokers won't come to recruit us if we complain. We need to be able to work because the camp rations were recently reduced."

Another respondent from a different study site stated:

"We complain to no one. Even if we are only paid Ks.3,000/day [instead of Ks.6,000/day], we can't complain. The brokers know that no matter what the job is, and no matter how much we are paid, we will surely work. We are in the situation where we worry about job opportunities and whether the brokers will come to the camp to offer jobs."

Second, IDP respondents reported facing discrimination regarding education. Respondents from both camps reported that IDP students attending schools within the host community faced discrimination from teachers as well as other students. Respondents from one study site reported that IDP students were discrim-

inated against by the headmistress because their families could not afford to donate to the school. In another study site, after a teacher hit an IDP child and subsequently lost her school-provided housing, the teachers at the school reportedly neglected the IDP students' education. One parent reported that the head teacher admonished the IDP students during school assembly, stating that they were "not smart." In both camps, respondents reported IDP students being teased by other children and called "bean eaters" (ပဲစားတူလေးများ :peh-saakalaemya) because they only had beans to eat in the camp.

Third, IDP respondents from one study site reported feeling discriminated against when they accessed health services at a government hospital. Women respondents felt that the doctors and staff did not treat IDP patients carefully, and also reported that hospital staff told them that they were "dirty" and had too many children.

### **Conflict-Related Issues**

Some respondents described how they came to be displaced to camps as a result of armed conflict between the Tatmadaw and the KIA. In one study site, female respondents elaborated:

"There is a war between the Kachin [people] and the Bamar Tatmadaw. The Shans are also running (i.e., being displaced). Kachins are living in the hills, and the war is in the hills. So it is mainly the Kachins who are running. ... There were two big clashes in our village, and people died. Compared to the Shan and the Palaung, the Tatmadaw suppress the Kachin more. If they are Christians, they are suppressed more."

IDP respondents also described feeling caught in the middle of the conflict between the Tatmadaw and the KIA.

In one study site, male respondents described their fear of being conscripted by the KIA when they worked as farm labourers in rural areas (as a result of insufficient job opportunities in

town). They explained that most people, with the exception of students, had to work for the KIA if they were recruited. Some respondents reported that the families of men conscripted by the KIA had to pay money for the men's release.

On the other hand, respondents from both camps also described the fear of being accused by government troops of being part of the KIA, and reported being under surveillance. Some respondents reported the case of a camp resident who was taken in the middle of the night by a group of police and soldiers and was arrested for being a member of the KIA (Box 28). In light of the incident, and because some camp residents had previously been conscripted by the KIA, male residents lived in fear of being suspected and accused by government forces.

#### **Box 28**

Three months after the camp was established, three military vehicles turned up and surrounded the camp at about 11pm one night. In one of the vehicles were the local administrator and Myanmar Police Force (MPF) officers.

The local administrator, Tatmadaw and MPF officers all entered the camp and began searching for the camp resident. They found him and arrested him, leaving behind his wife and child.

The man who was arrested was only released two years later, apparently on grounds that the authorities had arrested the wrong person.

Following his release, the man did not wish to live in the camp anymore, so he went back to his village to cultivate the land there. As his child had begun to attend primary school, his wife had no choice but to continue living in the camp.

Respondents from one study site also reported being detained and interrogated at military

checkpoints when they attempted to travel. As one female respondent described it:

“I went on a trip to a village north of the camp to visit my relatives. Government troops at a checkpoint asked to see my national identity card. When they saw the name of our village and saw that it is Kachin, they detained me and interrogated me, accusing me of being a member of the KIA. I was very frightened.”

Some respondents described a case of a mentally impaired young man who was detained and interrogated by military officials after he went to his home village. He was reportedly sent to a prison, where he has remained for over a year. As a result of such incidents, camp residents reported feeling that it was unsafe to travel and that they did not dare travel to areas that require passing through military checkpoints. They also explained that those who did attempt to pass military checkpoints were not allowed to continue.

### **Return/Resettlement**

Most of the IDP respondents in the two study sites have been living in the camps since 2011. Respondents generally expressed a desire to return to their home villages, but cited a number of reasons preventing them from doing so:

- Fear of arrest while travelling back to the village. Respondents in one study site explained that they did not dare travel back to their home villages because they would have to pass through military checkpoints. They described being fearful of arrest on suspicion of being part of the KIA, if and when they stated their names to soldiers at the checkpoints.
- Fear of government troops stationed near their village, who have ordered IDPs to leave the village. According to one female respondent, “Some of the IDPs returned to the village this year to resume farming. However, the soldiers

at an outpost nearby ordered them to leave. They had no choice but to run away from the village because they were afraid that the government troops would open fire on them if they disobeyed.”

- Lack of physical safety due to landmines. One male respondent stated, “I wish I could go back to my village to resume farming and earning a living, but I heard there are many landmines placed under the ground in the farmland.”
- Fear that fighting will resume. One respondent said, “We are always worried because we don’t know if the fighting will resume. I will go back home only when a ceasefire agreement has been signed by both sides.”
- Lack of economic opportunity in their original villages. One male respondent explained, “Only a small number of people are going back to the villages, so it’s impossible to do business and earn a profit. Here [in the urban area] we can earn an average of Ks.4,000 per day. If we work in the village, the daily income is only Ks.1,000.” He also stated that uncertainty over whether fighting will resume has prevented some potential returnees from investing in businesses.
- Non-existent or inadequate educational facilities. Respondents expressed concern that their children would not be able to receive adequate education if they returned because the teachers who have left were not returning to the villages, and many school buildings have been destroyed. Respondents also expressed the opinion that the quality of education was better in urban areas.

In general, IDP respondents also expressed an openness to being resettled. Some desired to be resettled close to urban downtown areas so that they could access education, healthcare and livelihood opportunities. The government has designated a village for resettlement for

IDPs from one study site, but respondents stated that they did not want to move there because the new village was far away from urban areas, with limited job opportunities.

### ***Relationship with the Host Community***

IDP respondents from both study sites stated that they tried to get along with their respective host communities.

In one study site located within a church compound, however, respondents described having a less than amicable relationship with their host community. Some reported being excluded from religious activities: camp residents were not allowed to attend the same prayer meetings and services as local community members because the latter complained that IDP children were noisy and smelly; one camp resident admitted that IDP children sometimes urinated during services. As the church compound could no longer be used for community activities such as fairs and sports matches due to the existence of the camp, residents felt that local church members resented their presence.

At a broader level, respondents in the same study site reported local community members blaming IDPs for the rising prices of goods, and making disparaging remarks about them when they visited the markets. IDP respondents also felt that the host community unfairly blamed them for crimes such as motorcycle theft and drug smuggling.<sup>70</sup> Some respondents stated that, in the five years of the camp's existence, police have conducted three midnight raids, blocking off all entrances and exits to the camp during the search, but none of the searches turned up the stolen motorcycles or drugs. Furthermore, male respondents reported that youths from the community were aggressive towards IDPs, which resulted in many verbal and physical fights (Box 29).

#### **Box 29**

In 2013, four IDP youths were eating at a teashop when several local youths started throwing stones at their motorbikes, angering them. When the local youths left on motorbikes, the IDP youths followed them very closely on their own motorbikes, to annoy them and impede their way. The local youths fell off their motorbikes and were injured.

The parents of the local youths complained to the police and the four IDP youths were arrested and tried in court. Three of the four were sentenced to two years in prison. The fourth, who was 13 years old, was sentenced to five months in prison.

### ***Sexual and Gender-Based Violence***

Although respondents did not identify SGBV as a priority concern for the community, the study revealed that quarrels between couples that resulted in domestic violence was not uncommon, and that there were few repercussions against the perpetrators. In one case, however, a man threatened his wife with a dagger and a neighbour reported it to the camp-in-charge. As the man had a record of violence, he was expelled from the camp by the camp-in-charge.

In one study site, young women had been forcibly taken away from the camp by young men. In one case, in which a girl was kidnapped by a boy from the host community, negotiations between family members from both sides, with the participation of camp committee members and a person with knowledge of Kachin customs, led to a settlement of Ks. 400,000. This case was considered by the community to be “elopement against the girl's wishes” (အလိုမတူပဲနိုးပြေးခြင်း : ah lo ma du beh khoepyaejin) rather than a form of SGBV. In a second case, which also involved sexual violence and resulted in a pregnancy, the incident was considered an “elopement” (နိုးပြေးတယ်:khoepyaedeh) and not rape (Box 30).

<sup>70</sup> Respondents from the host community reported having experienced more crimes since the IDP camp was established in their ward.



### Box 30

In 2015, a 19-year-old female resident of an IDP camp was invited to a festival by a young man of similar age who also lived in the camp. Instead of taking the young woman to the festival, he took her back to his home village, which was a two- to three-hour motorbike ride from the camp.

At the village, the young man took the young woman to his family's farmhouse and raped her; she became pregnant. He also threatened to kill her if she attempted to run away. Coerced into staying in the village, the young woman was also forced to cook and work on the farm.

When the young woman was six months pregnant, her grandmother found her at the village and brought her back to the camp.

A month after her return to the camp, the young man's family and relatives came to the camp and met the young woman's family and the camp management committee to negotiate a marriage. The young woman refused to marry the young man, and her family asked for compensation according to Kachin tradition.

The man's family would not agree to provide any compensation or help to support the child. The young woman's family had to settle with an agreement that the man would stay away from the woman and the child.

The camp-in-charge explained, "The young woman's family said this was a rape case, but it isn't rape because her pregnancy matured. Since this is not a rape case, I couldn't do anything about compensation. There would have been a problem if the boy did not want to marry her, but in this case, he was willing to marry her and she was the one who did not want to marry him. So it is beyond what we can do."

The young woman reported that she felt both insulted and ashamed, and stated that many people in the camp thought that her pregnancy was her fault.

The camp's GBV Committee was not involved in this case as it was not considered a case of SGBV, and the

only support the woman received was Ks.10,000 to Ks.20,000 from a local NGO working on health and gender issues because of her financial struggles in raising the child.

A lack of economic opportunities has forced some female IDP respondents to turn to sex work in order to earn a living. In one study site the neighbours of a young sex worker reported her and her client (not a camp resident) to the section-in-charge. When the client refused to pay the Ks.15,000 fine imposed by the section-in-charge and left, it was decided that the young woman would instead pay the fine as a warning so that "she wouldn't do such a thing again".

*In summary, just over one fifth of the IDP respondents had been involved in one or more disputes in the previous 12 months. The most common disputes related to working hours or wages, and fights, the latter being their greatest concern.*

*IDP respondents reported being subject to various forms of discrimination, including labour exploitation and wage discrimination, and discrimination in education and access to health care.*

*Like other respondents, IDP respondents feel they are caught in the middle of armed conflict, suffer from a lack of security and protection and are frustrated by being unable to seek redress for the negative impact of the conflict on their lives. They wished to return to their home villages but were prevented from doing so by fear, insecurity and a lack of economic and educational opportunities. IDP respondents did not generally enjoy good relationships with their host communities.*

*Domestic violence and other forms of sexual abuse and exploitation were not uncommon in the IDP communities and there were few repercussions against the perpetrators. A lack of economic opportunities has forced some female IDP respondents to turn to sex work to earn a living.*

## DISPUTE SETTLEMENT TRAJECTORIES

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

This section is concerned with the 22 disputes IDP respondents identified as being of priority concern. It describes how settlement of those disputes was attempted, and sometimes achieved. It also considers the roles and responsibilities of third-party actors at the local and district levels who can assist in the settlement of people's disputes and concerns about justice.

### Direct Negotiations and Third-Party Assistance

In almost all cases (19 of 22), respondents negotiated directly with the other party to the dispute. Almost half (10) of these matters were

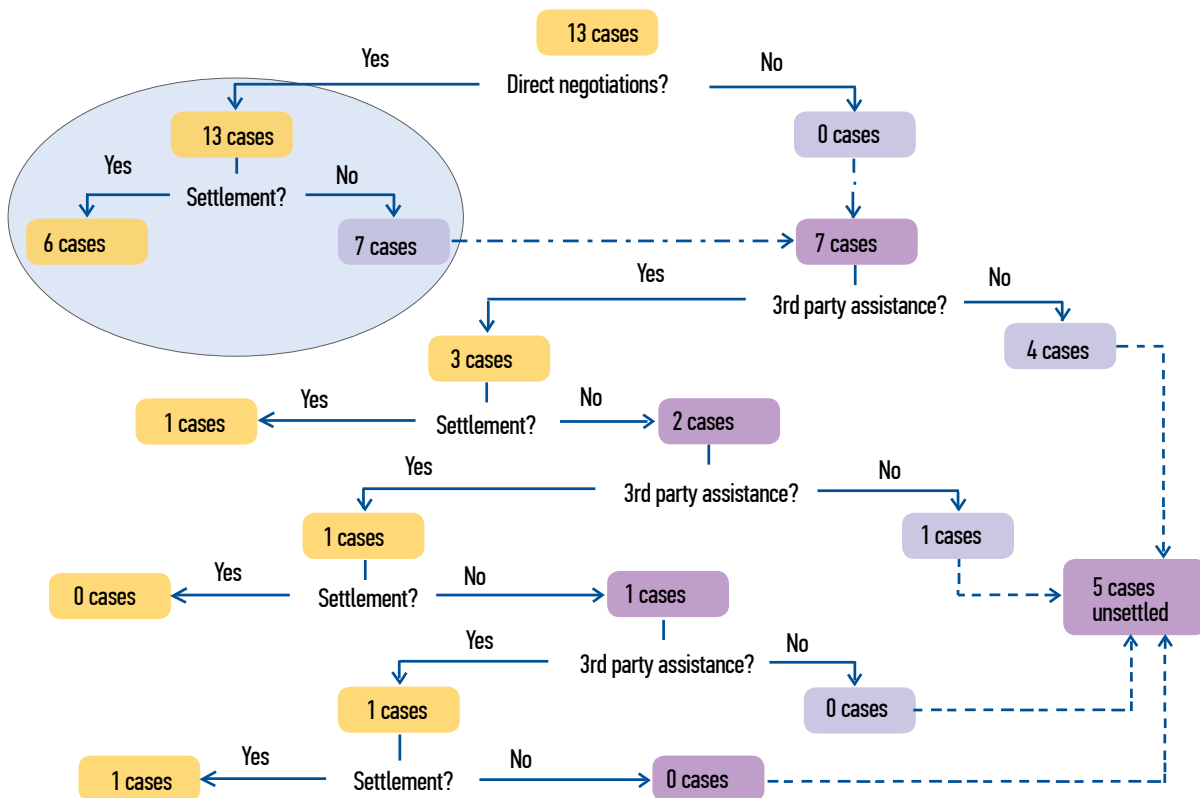
settled through negotiation, with or without the assistance of a third party.

The five types of dispute of greatest concern (Figure 7.10)<sup>71</sup> together accounted for 13(59%) of the 22 priority concerns. Figure 7.11 summarises the settlement trajectories of these 13 disputes. In all 13 cases, complainants attempted to settle the dispute by direct negotiations in the first instance; only 6 of the disputes were settled.

Where initial negotiations were not attempted or unsuccessful (7 disputes), three complainants went on to seek assistance from one or more third parties, which led to the settlement of two more disputes. These respondents sought assistance from local administrators, the camp-in-charge, 100-HHH or the township court to help resolve their concerns.

No settlement was reached in 5 cases – nearly 23% of the 22 disputes of greatest priority concern.

Figure 7.11 Attempts at Settlement of Priority Concerns (IDP Respondents)



71 Fights (4 of 22 disputes) and disputes over working hours or wages (3), debts owed by others (2), forced marriage (2) and land (2).

Those respondents who had settled their disputes through direct negotiations described having achieved satisfactory outcomes (e.g., “I am satisfied as I am earning the amount that I wanted”; and “My daughter returned with no harm and I am satisfied”). The reasons for feeling satisfied included acknowledgement of their own role in a dispute (e.g., “It was my fault. I apologised and the problem was settled, and that is why I am satisfied”), the recognition and upholding of one’s rights (e.g., “The other party attempted to take my land. I did not have to give it to them and that is why I am satisfied”) and attainment of an altruistic end (e.g., “I am satisfied as I could help them [despite cancelling debt owed]”).

In four of the seven cases not negotiated to a conclusion in the first instance, the complainant did not seek help from a third party. These respondents gave various reasons, including:

- The problem was not sufficiently important (2 instances);
- Seeking help or taking action would cost too much (1 instance);
- Seeking help or taking action would damage the relationship with the other party (1 instance).

IDP respondents also considered four hypothetical disputes (involving debt, domestic violence, traffic accident and human trafficking)<sup>72</sup> and indicated how they would resolve them. Their responses to the first three scenarios (Figures 7.12(a) to 7.12(c), Annex II) were generally consistent with their inclination towards self-reliance in the first instance (i.e. direct negotiation) to settle actual disputes, although some would seek assistance from the section-in-charge.

In the hypothetical situation involving human trafficking, most respondents said they would first seek assistance from the township police or

other branches of the police, and some would involve the section-in-charge. If they were unsuccessful, 59% of respondents indicated that they did not know from whom to seek help or had nobody to turn to (Figure 7.12(d), Annex II).

## Camp Management Structure

In both IDP study sites, the head of camp administration, whom the respondents called the “camp-in-charge” (စခန်းတာဝန်ခံ : camp taawun khan), emerged as an important third party. The camps-in-charge were observed to perform many of the duties traditionally performed by local administrators, including overseeing the administration of the camp and helping to settle disputes.

In the first study site, the camp-in-charge was a middle-aged former primary school teacher who was elected to the position by camp residents. She helped settle disputes within the camp such as fights, arguments between couples and incidents of alcohol intoxication causing public nuisance, as well as fights between camp residents and members of the local host community. In cases of public nuisance, the camp-in-charge would give the offender several warnings; on the third violation, she would inform the local administrator or police and ask them to deal with the case. If a camp resident acted violently, the camp-in-charge would require them to sign a document promising not to repeat their action (khanwun); if the person breached the contract and acted violently another time, he/she would be assigned to complete chores around the camp, such as washing toilets and cleaning the compound.

This camp-in-charge also served as a link between the IDP camp and outside institutions. She provided information on the camp’s population to the local administration, coordinated with UN agencies such as the United Nations High Commissioner for Refugees (UNHCR),

72 To adapt the questionnaire to the IDP camp context, two hypothetical disputes – involving theft of fruit from the garden and a land boundary-related dispute – were omitted.

wrote recommendation letters for IDPs who needed to travel or go to the township hospital, and negotiated the release of camp residents detained at the local police stations for riding motorbikes without helmets.

A small number of people, called camp coordination and camp management focal points, act as representatives of the camp-in-charge and assist her with her administrative duties. The focal points were also responsible for discharging the camp-in-charge's duties, including settling disputes and writing recommendation letters, in the latter's absence. Where disputes were not satisfactorily resolved by the focal points, they were reported to the camp-in-charge. The focal points were educated young men and women elected by camp residents.

Other people who played important roles in the first study site included: (i) a Catholic priest who, despite not having an official role in camp administration, sometimes helped mediate small arguments, and also, upon request of the camp-in-charge, helped secure food from donors when rations provided by UN agencies were insufficient; (ii) long-house<sup>73</sup> wardens (အဆောင်မှူး : ah hsaunghmu) who were in charge of food distribution in different sections of the camp; and (iii) members of thematic committees (on primary education, education, women, GBV, youth, food management, discipline, anti-drugs, fire brigade, and water, sanitation and hygiene (WASH)).

In the second study site, the camp-in-charge was a pastor displaced from his home village, who had been chosen by the church to head camp administration. Given the size of this study site, and because camp residents believed that it was improper for a pastor to settle social disputes, most issues were not brought directly to the attention of the camp-in-charge. Therefore, the camp-in-charge only handled more serious disputes within the camp, and he had the authority to expel residents from the

camp – an authority that has been exercised on at least one occasion when a resident was uncontrollably violent. The camp-in-charge was also the primary point of contact with outside institutions such as UNHCR and the police.

The second study site was geographically divided into a few administrative sections, with each section headed by a "section-in-charge". Camp residents would initially approach their respective section-in-charge for help in resolving problems such as arguments between couples and fights between camp residents and members of the local host community. One particular section-in-charge, a former village leader with a good reputation for dispute settlement, was said to be relied upon by residents from other sections. Only more serious cases were brought by the sections-in-charge to the attention of the camp-in-charge. Sections-in-charge were also responsible for handling administrative duties within their geographic areas, such as documenting population and rations lists, which were reported to the camp-in-charge.

As in the first study site, the second study site also had long-house wardens (လိုင်မှူး : line hmu) who were in charge of food distribution within their "lines" – smaller geographic areas within the larger administrative sections – and committees (on electricity, water and education).

*In summary, IDP respondents showed stronger self-reliance in dispute settlement than others. In attempting to resolve their disputes, IDP respondents negotiated directly with the other party in almost all cases, and almost half of these disputes were settled, with or without the assistance of a third party. Almost one quarter of all priority concerns were not settled.*

*Third parties who assisted with dispute settlement included the head of camp administration ("camp-in-charge"), camp focal points, "sections-in-charge", a priest or pastor, long-house wardens and thematic committees.*

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73 A single temporary shelter within an IDP camp is typically constructed to accommodate a few families, i.e. a long house that is partitioned.

## ATTITUDES TOWARDS THE JUSTICE SYSTEM AND JUDICIAL ACTORS

This section describes IDP respondents' perceptions and attitudes towards the justice system, and towards those who have a role in the provision of justice services.

### Perceptions of the Justice System

To gauge IDP respondents' attitudes towards the justice system generally, the study sought their perspectives on three indicative matters, which related to bribery or corruption, access to the formal court system and the function of the law in a specific context (Table 7.5).

Just under one half (49.0%) agreed that having knowledge will increase people's access to the formal courts, although 44.0% thought instead that having personal connections would increase access.

Nearly two thirds (65.0%) of IDP respondents indicated their belief that the law prevents abuses by the rich and powerful, while 31% agreed that the law protects the interests of the rich and powerful. Very few (1.0%) opted for both. Both statements could be interpreted as demon-

Table 7.5 Attitudes Towards the Justice System (IDP Respondents)

Subject	Statements	Agree*
BRIBERY	(a) Public officials are not paid enough, so it is acceptable for them to ask for additional payments.	38.0%
	(b) Public officials are meant to serve the public, and it is not acceptable for them to ask for additional payments.	57.0%
ACCESS TO FORMAL COURTS	(a) Having knowledge will increase people's access to the (government) courts.	49.0%
	(b) Having personal connections with officials will increase people's access to (government) courts.	45.0%
FUNCTION OF THE LAW	(a) The law protects the interests of the rich and powerful.	31.0%
	(b) The law prevents abuses by the rich and powerful.	65.0%

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

A majority (57.0%) of IDP respondents thought that, as public officials are meant to serve the public, it is not acceptable for government staff to ask for additional payments.

strating the belief that legislation, properly administered, can or should protect the rights of ordinary people. If so, a potential 93% of IDP respondents (a similar proportion as of non-IDP respondents) could be said to hold such a view.

## Perceptions of Judicial Actors

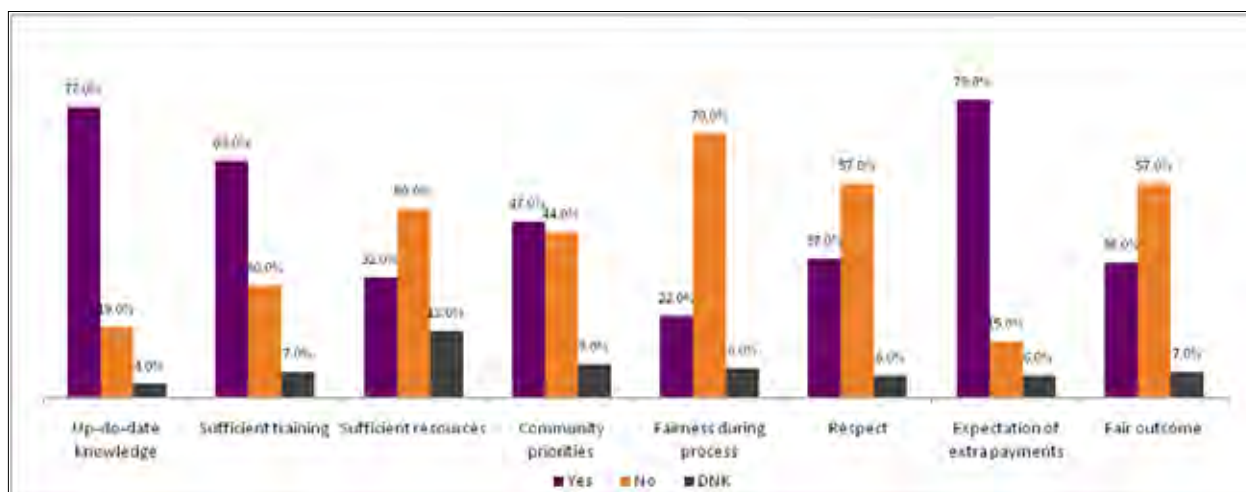
The study also sought to explore IDP respondents' perceptions towards formal justice sector actors – judges, law officers, and the police – as well as community leaders<sup>74</sup> (Figures 7.13(a) to 7.13(d)).<sup>75</sup>

### Judges

Overall, IDP respondents expressed confidence in the competence of judges, but tended to doubt that judges' values aligned with shared values such as fairness, respect and a lack of corruption (Figure 7.13(a)). It should be noted that IDP respondents' perceptions of judges might be explained in part by their relative lack of exposure to the formal justice system, as discussed earlier in this chapter.

In relation to shared values, just under half (47.0%) the respondents perceived judges to be aligned with community priorities, and another 44.0% thought the opposite. A majority of respondents (57.0%) perceived that judges would not treat respondents with respect, and also that judges would not come to a fair outcome if a dispute were brought before them. More than two thirds (70.0%) believed that judges would not be fair when resolving disputes, and about four in five (79.0%) thought that judges would expect additional payments for their services.

Figure 7.13(a) Perceptions of Judges (IDP Respondents)



More than three quarters (77.0%) of IDP respondents perceived judges to have up-to-date knowledge and almost two thirds (63.0%) believed them to be sufficiently trained. Half the respondents (50.0%) thought that judges did not have sufficient resources to carry out their responsibilities.

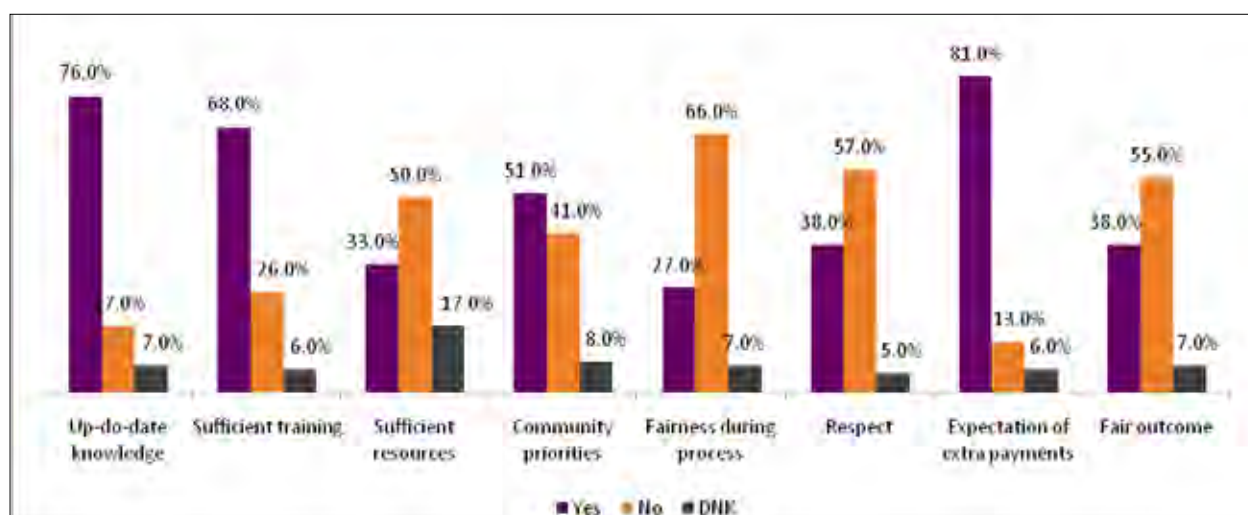
### Law Officers

IDP respondents' perceptions of law officers were similar to their perceptions of judges (Figure 7.13(b)).

<sup>74</sup> Note that ward and village tract administrators have formal dispute settlement roles, as provided in the 2012 Ward or Village Tract Administration Law (see Part III).

<sup>75</sup> In this context, competence was defined to include up-to-date knowledge, sufficient training and adequate resources, and whether such people had the right intentions to do what the public trusts them to do. The notion of right intention or shared values included alignment with community priorities, respectful treatment, fair treatment and outcomes and no expectation of additional payments for services (see Chapter 1).

Figure 7.13(b) Perceptions of Law Officers (IDP Respondents)



IDP respondents generally perceived law officers to be competent, with up-to-date knowledge (76.0% of respondents) and sufficient training (68.0% of respondents) to carry out their responsibilities. Half (50.0%) of IDP respondents, however, thought that they did not have sufficient resources to carry out their responsibilities.

In relation to shared values, IDP respondents' perceptions of law officers reflected their perceptions of judges. More than half (54.5%) thought that law officers are not aligned with community priorities, 57.0% believed that law officers would not treat them with respect and 55.0% believed that they would not come to a fair outcome if a dispute were brought before them. Almost two thirds (66.0%) of IDP respon-

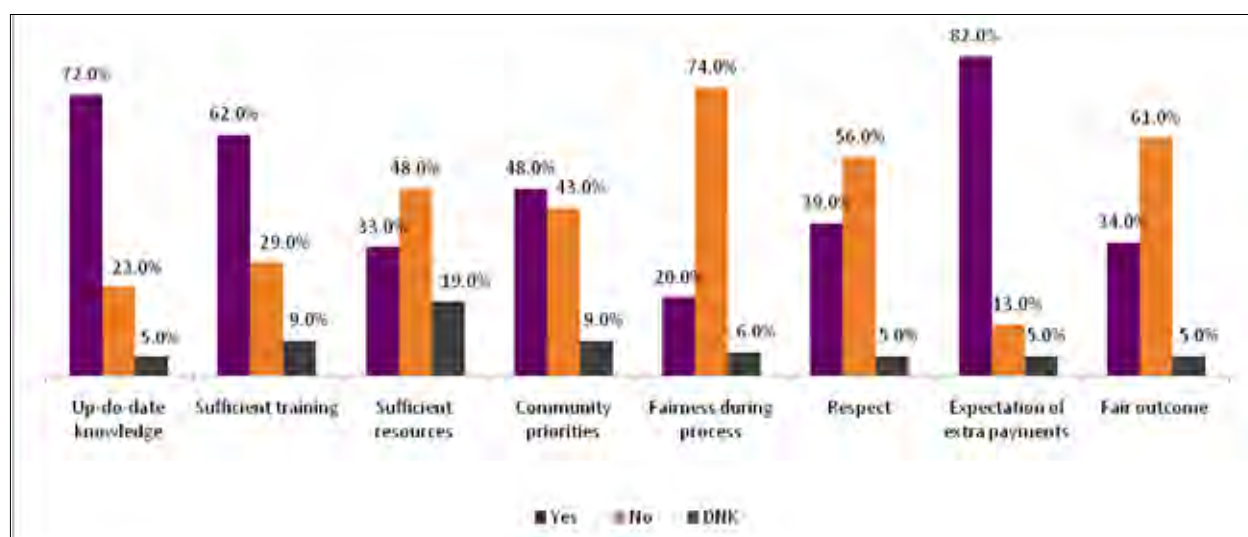
dents believed that law officers would not be fair when resolving disputes. Fully 81.0% believed that law officers would expect additional payments for their services.

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

### Police

IDP respondents' perceptions of the police broadly followed the same patterns as their perceptions of judges and law officers (Figure 7.13(c)). They perceived the police to be competent but lacking in sufficient resources, and very likely to expect extra payment for their services.

Figure 7.13(c) Perceptions of the Police (IDP Respondents)



Nearly three quarters (72.%) of respondents believed the police have up-to-date knowledge and two thirds (66.0%) believed them to have sufficient training, but only 33% thought they had sufficient resources to carry out their responsibilities.

In relation to shared values, IDP respondents had significantly less positive perceptions of the police than did other respondents. Nearly half the IDP respondents (48%) thought that the police are not aligned with community priorities; only 43% thought that they are. Only 39% thought that the police would treat respondents with respect and even fewer (34%) thought that the police would come to a fair outcome if a dispute were brought before them. Only 20.0% of IDP respondents believed that the police would be fair when resolving disputes and almost three quarters (74.0%) thought that they would not. More than four in five IDP respondents (82%) thought that the police would expect additional payments for their services.

### Community Leaders

IDP respondents' perceptions of community leaders<sup>76</sup> differ quite significantly from their perceptions of judges, law officers and the police (Figure 7.13(d)).

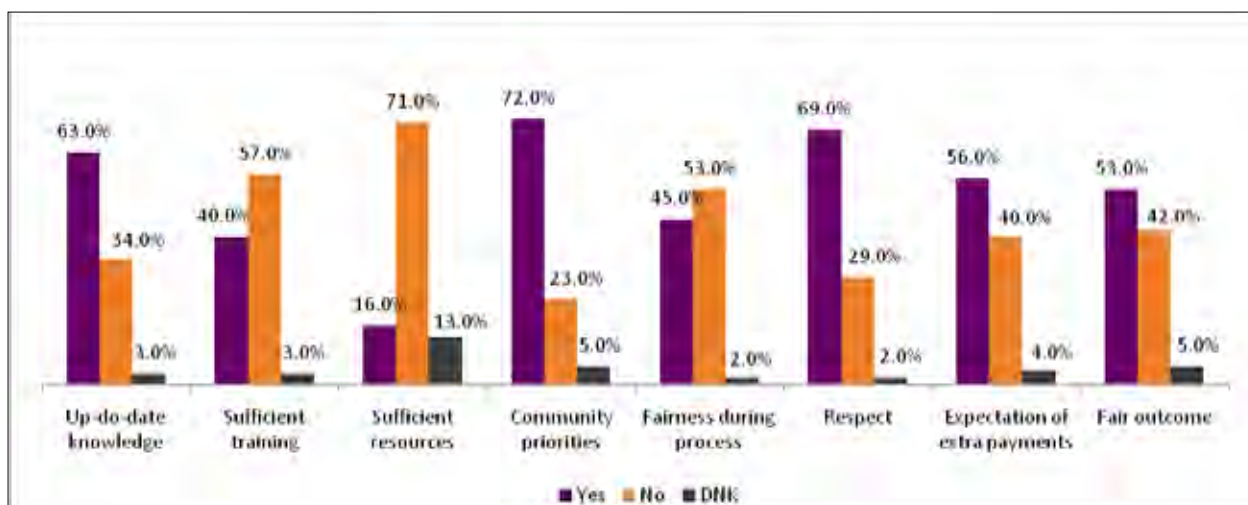
While nearly two thirds (63.0%) of IDP respondents believed that community leaders have up-to-date knowledge, 57.0% perceived them not to have sufficient training. Significantly, 71.0% thought that community leaders did not have sufficient resources to carry out their responsibilities.

However, 72.0% believed that community leaders are aligned with community priorities, and over two thirds (69.0%) thought that community leaders would treat them with respect. Interestingly, a majority of IDP respondents (53.0%) perceived that community leaders would not be fair when resolving a dispute, but the same proportion believed they would come to a fair outcome. A majority (56.0%) of IDP respondents perceived that community leaders would expect extra payments for their services.

### Public Trust in Judicial Actors

A composite trust indicator was constructed (on the basis of responses represented in Figures 7.13(a) to 7.13(d)) to indicate IDP respondents' trust in judges, law officers, the police and community leaders<sup>76</sup> (Table 7.6).

Figure 7.13(d) Perceptions of Community Leaders (IDP Respondents)



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

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



Table 7.6 Trust in Judicial Actors (IDP Respondents)

Actors	Trust Indicator
Judges	18.3%
Law officers	20.7%
Police	18.3%
Community leaders	25.0%

Judges and the police were the least trusted by IDP respondents, and community leaders the most trusted. The trust indicator for community leaders (30.0%) is somewhat lower than the 37.0% of IDP respondents who elsewhere indicated that they trusted community leaders “very much”<sup>78</sup> (Figure 7.5 and Figure 7.5(b), Annex II).

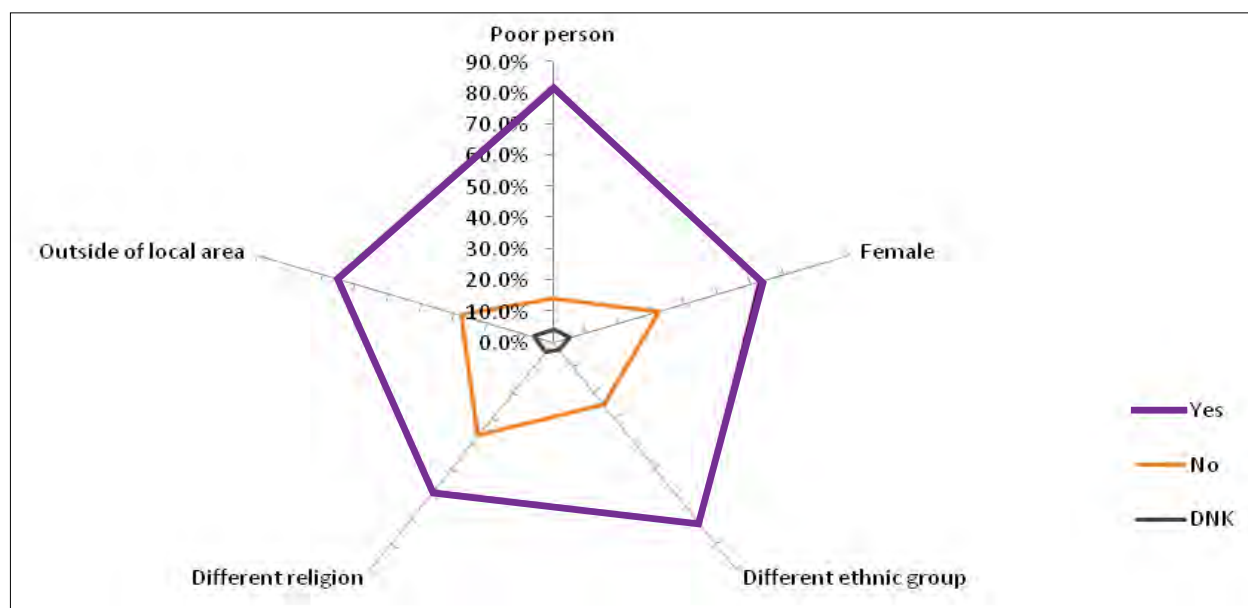
### Perceptions of Unequal Treatment

The study sought to gauge the extent to which respondents believed that people would or would not be treated equally in the justice system. IDP respondents were asked to imagine a scenario in which two suspects who are equally suspected of committing a crime have been

detained and charged by the authorities. They were then asked whether, if one of the suspects had certain characteristics, it would place them at a disadvantage (Figure 7.14).

The characteristic of being poor was considered much more disadvantageous than any other in respect of a person’s treatment by authorities when charged with a crime. More than four in five (82.0%) IDP respondents thought that a suspect who was poor would be placed at a disadvantage. Almost three quarters (72.0%) thought that a suspect who was of a different ethnic group than that of the public official would be disadvantaged. Around two thirds (66.0%) thought that a suspect who was from a different part of the country, and not from

Figure 7.14 Perceptions of Unequal Treatment (IDP Respondents)



78 In addition, just under one third (32.0%) of IDP respondents indicated that they “trust [community leaders] somewhat”, and another 12.0% indicated that they “trust [community leaders] a little”.

the local area, would be placed at a disadvantage. Almost two thirds (63.0%) thought that a female suspect would be placed at a disadvantage. A majority (59.0%) thought that a suspect of a different religion than that of the public official would be placed at a disadvantage.

These responses suggest a prevalent perception among IDP respondents that officials in the justice system do not act in a non-discriminatory manner.

### Attitudes to Accountability

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

In the first scenario, a large majority (68.0%) of respondents would or might report the incident. In the second scenario, respondents were split, with 49.0% likely to report the incident and 46% saying they would not (Figure 7.15).

Those who would or might report the hypothetical incidents would take almost identical action in response to each. The highest proportions of "reporting" respondents would report the incident internally to the parent department: the township Land Records Department in the first situation (24 of 68 respondents; 35.3%) and the township Immigration Department in the second situation (19 of 49 respondents; 38.8%). Others would report to the village administrator (Scenario 1: 19 of 68, 27.9%; Scenario 2: 10 of 49, 20.4%).

"Reporting" respondents also had very similar expectations of the outcomes of their reporting in each scenario. In both instances, the highest proportion of respondents expected that action would be taken against the offending official (Scenario 1: 29 of 68, 42.6%; Scenario 2: 24 of 49, 48.9%). The second most common response was the expectation that the person who reported the incident would not have to make the extra payments demanded (Scenario 1: 22 of 68, 32.4%; Scenario 2: 16 of 49, 32.7%).

The reasons given by respondents who indicated they would not report such incidents are presented in Figure 7.15(a).

Figure 7.15 Attitudes to Accountability (IDP Respondents)

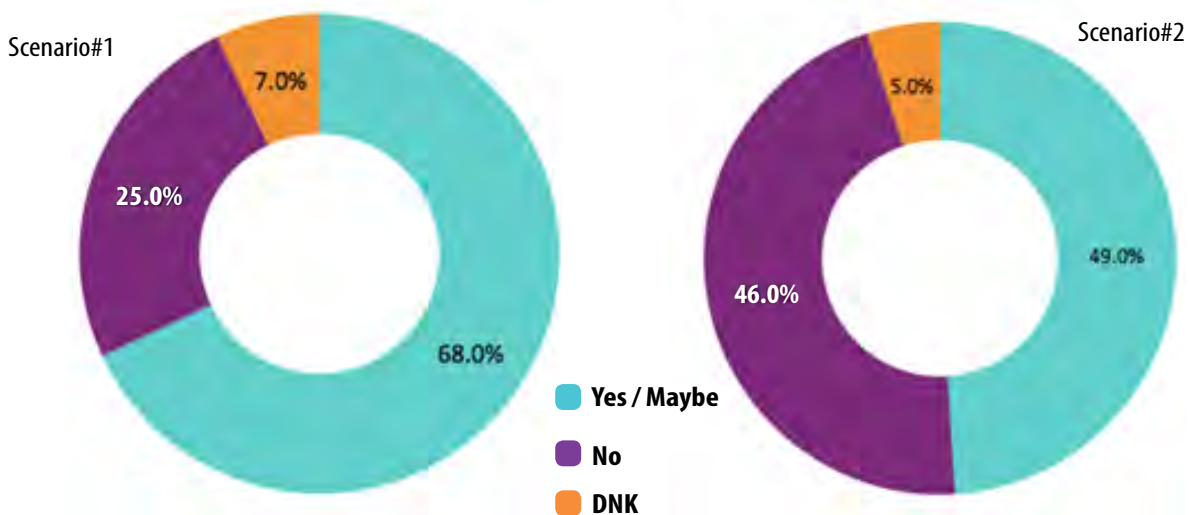
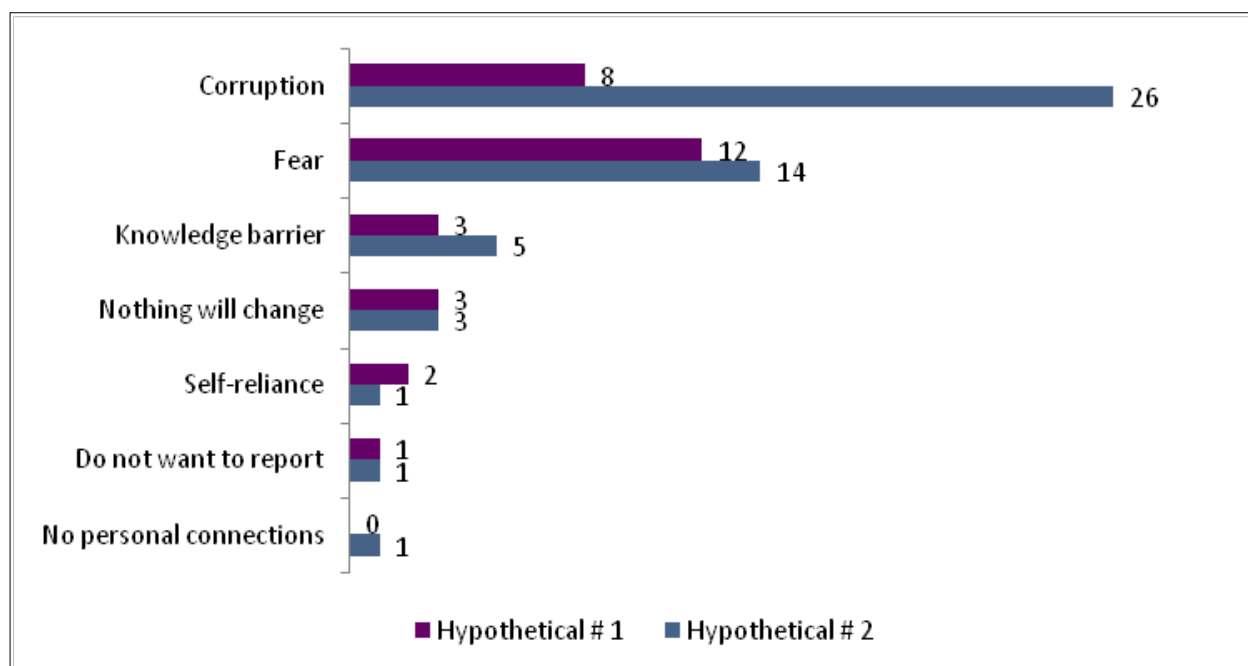


Figure 7.15 (a) Perceived Barriers to Accountability (IDP Respondents)



In relation to both hypothetical scenarios, significant proportions of IDP respondents identified corruption and fear as factors that inhibited attempts at securing accountability.

Twelve (of 25) and 14 (of 46) respondents respectively expressed apprehension about having to deal with formal government bureaucracy (e.g., “I do not want to be [involved with a] complicated case, and will not report”, and “As I am not so educated, I dare not go [to government offices], dare not report, and dare not make noise”), and fear that complaining about being asked for money to obtain land registration would only lead to more problems for the complainant (e.g. “As I will obtain the registration, I will pay whatever it costs. If I report, things will become complicated, and it will [also] cost for further unnecessary matters”, and “I don’t know where to report. It is the government and I am afraid that there will be problems”).

Significant proportions of IDP respondents (Scenario 1: 8 of 25; Scenario 2: 26 of 46) also recognised the entrenched nature of corruption, and indicated that they would pay the amounts asked of them in order to secure what

they required (e.g., “It is difficult to acquire land registration. So I think we should pay as much as they demand”, and “It is important to obtain identity documentation. If we do not have [it], it will be very difficult to travel. That is why I will not report”).

*In summary, a majority of IDP respondents believed that it is not acceptable for government staff to ask for additional payments. Just under one half agreed that having knowledge will increase people’s access to the formal courts and 44.0% thought that having personal connections would increase access to the courts.*

*A similar proportion of IDP respondents as of non-IDP respondents (potentially 93%) demonstrated the belief that legislation, properly administered, can or should protect the rights of ordinary people.*

*Like other respondents, IDP respondents expressed confidence in the competence of key judicial actors but tended to doubt that their values aligned with shared values such as fairness, respect and a lack of corruption. Between 79.0% and 82.0% of IDP respondents thought that judges, law officers*

*and the police would expect additional payments for their services. IDP respondents' perceptions of the police overall were significantly less positive than those of other respondents.*

*Large majorities of IDP respondents believed that community leaders are aligned with community priorities, and would treat them with respect and be fair. A clear majority also thought that community leaders would expect additional payments for their services.*

*Among judicial actors, judges and the police were the least trusted by IDP respondents and community leaders the most trusted.*

*There is a prevalent perception among IDP respondents that judicial officials do not act in a non-discriminatory manner, particularly if a person is poor – 82.0% thought that a poor suspect would be placed at a disadvantage with authorities if charged with a crime.*

*A large majority of IDP respondents would or might report a hypothetical incident relating to corruption in the context of applying for land registration, but fewer would in the context of renewing identity documentation. Those who would report corruption were most likely to expect as an outcome that action would be taken against the offending official. The existence of corruption and fear influenced those who would not report corruption.*



## CHAPTER 8

# CONCLUSIONS AND RECOMMENDATIONS

Photo: Man involved in traditional weaving in Kachin State.

The results of this study give some indication of the perspectives of respondents in 10 study sites (eight wards and villages, and two IDP camps) in Kachin State in relation to access to justice and the rule of law, including public accountability. The study identified the basis for the disputes respondents have experienced, respondents' concerns about justice, the impact such problems have had on them, the ways in which they have sought to settle such disputes and resolve their concerns, and the challenges they have encountered in doing so.

The socio-economic characteristics of the respondents (Chapters 2 and 7) provide an important context to this research, revealing some of the factors shaping the environments in which the concerns about justice arise. Those factors also influence how and to what extent individuals and communities are able to seek help to access justice in response to their concerns.

To reiterate the conceptual discussion presented in Chapter 1, this study revealed shared values to be central to the exercise of access to justice. These shared values also inform people's expectations of judicial processes, whether in formal, quasi-formal/administrative or informal contexts. These values include equality before the law, non-discrimination, respect for others, fairness and a lack of corruption in society. At community level, they relate to equality and non-discrimination in social affairs, and transparency, independence and fairness in judicial processes. These values relate to fundamental principles of human rights. They also imply a common expectation of accountability, one of the prerequisites of good governance.

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

tives of respondents in Kachin. The key findings summarised below, and the consequent recommendations for justice sector actors and policymakers and Development Partners, are presented within this framework.

## EQUALITY

At its most extreme, the plea for equality has been manifested through armed conflict. At the other end of the spectrum, concerns about justice frequently remained unexpressed, and often went unrecognised where they involved vulnerable groups. This was especially the case in relation to female respondents' experience of violence in the home, and with the various forms of discrimination faced by IDP respondents. In other instances, inherent cultural characteristics were officially sanctioned as a ground for differential treatment – this was encountered by some respondents with regard to application for civil documentation. These experiences of differential treatment on the basis of ethnicity, religion, sex and vulnerability all highlight the aspirations of individuals and communities for equal recognition, and for fair and equitable treatment by the State and others.

Equality, as both a principle and a substantive ideal, given Myanmar's demographic and cultural diversity, must therefore be a key rule-of-law norm that guides and gives form to the varied interactions between the State and its people. These include relationships between the Union government and the ethnic borderlands, among Myanmar's diverse ethnic groups, between men and women, and between the majority Buddhist population and minority religious groups.

In this regard, efforts aimed at rebalancing structural inequalities and at overcoming ingrained patterns of marginalisation and exclusion are a priority.

## EQUALITY: KEY RECOMMENDATIONS

### Regarding education and social cohesion:

- Develop a civic education and public awareness campaign encompassing topics on the Myanmar State and society, which will also serve to foster the development of a national identity that embraces the country's cultural, ethnic and religious diversity, and that promotes equality, fairness, respect and tolerance.
- Ensure that a national civic education curriculum is taught at schools to all children at an appropriate age.
- Carry out inclusive and transparent consultations with all relevant stakeholders on the development of a multilingual education policy as part of the nationwide education reform process.

### Regarding human rights:

- Institute specific policies prohibiting all forms of discrimination in civil service recruitment and human resources policies.
- Take steps to ensure that IDPs have the right to just and favourable conditions of work, including fair wages and equal remuneration for work of equal value without distinction of any kind.
- Clarify the legal framework for citizenship and residency to bring it in line with Myanmar's Constitution and obligations under international human rights treaties and instruments.
- Adopt the National Strategy on Development of Statistics as a platform for appointing an independent Civil Registrar-General, who will have clear responsibility for advancing a universal and equitable civil registration agenda, and for finalising the attendant legal framework.

- Ensure the integration of continuous professional development, especially on substantive equality, non-discriminatory treatment and respect for diversity (at region/state capital level) as part of the professional duties and responsibilities of all justice sector officials and public servants.

## ACCOUNTABILITY

Respondents clearly expressed their adherence to the principle of public accountability and their expectation that it would be delivered as of right.

Four dimensions of public accountability emerged from respondents' concerns relating to land disputes, obtaining civil documentation, bribery or corruption, the political economy of conflict and resource extraction, and the impact of armed conflict.

The first dimension—evident in relation to difficulties obtaining civil documentation and to certain types of land disputes—demands that those who exercise some form of state function, or who have a role in the provision of public services, must be held to act in ways that are within their lawful spheres of authority (administrative law).

The second dimension of accountability pertains squarely to the issue of bribery and corruption. This dimension has strong associations with the first, and constitutes abuse of authority for personal gain.

Respondents' concerns relating to the political economy of conflict and resource extraction, and to the impact of the armed conflict on IDP respondents in particular, highlight the third and fourth dimensions of accountability: the concept of criminal torts under Myanmar's com-

mon law system<sup>79</sup> and the important issue of transitional justice. Transitional justice includes the promotion of truth, justice, reparation and guarantees of non-recurrence in addressing gross violations of human rights and serious violations of international humanitarian law. It is the key to ensuring justice, providing remedies to victims, promoting healing and reconciliation, restoring confidence in state institutions, and promoting the rule of law in Myanmar.

These four dimensions of accountability indicate four priorities for future action: (i) to promote the concept and practice of administrative justice (broadly construed to include all legitimate means of seeking redress in relation to abuse of public authority and quasi-judicial decision-making by officials of government agencies); (ii) to strengthen measures targeted at addressing corruption; (iii) to seek better understanding of the concept of criminal torts under Myanmar's common law system; and (iv) to initiate conversations about transitional justice.

The first two of these priorities are essential to addressing the apparently pervasive abuse of authority by public officials. Many respondents were involved in disputes as a consequence of discrimination (in law and in practice) and/or abuse of authority by state authorities, for which they have no recourse within the formal justice system. Indeed, administrative law is a major area of concern, given that people have no formal right to be heard or right to appeal important decisions – even if correctly made – by non-judicial government officials. Given the evident prevalence of discriminatory attitudes and practices among state authorities, negotiations to resolve concerns and disputes, if they are entered into at all, are likely to be inflected by the complainant's economic status, level of education, ethnicity, religion and gender, among other factors, and the outcomes tainted accordingly.

Such a situation imposes severe restraints on access to justice. This is evident in respondents' responses to hypothetical situations in which they encounter corrupt practice by state officials. Many identified the existence of corruption and their own fear as important factors

## **ACCOUNTABILITY: KEY RECOMMENDATIONS**

### **Regarding public accountability and corruption:**

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

### **Regarding administrative justice:**

- Increase trust in, and citizen satisfaction with, the formal justice and administrative law systems through improved decision-making skills and enhanced procedures that allow for people to: (a) be heard while their cases are adjudicated either in court or at a government agency; and (b) appeal decisions made through quasi-judicial administrative offices within the Government.

79 Note that the formal justice system does not play a role in ensuring access to justice for the significant loss of lives due to landslides in jade mines, for example.



### **Regarding internally displaced persons:**

- Ensure the participation of IDPs, particularly women, and all relevant stakeholders, in consultations relating to return/resettlement/relocation of IDPs.
- Ensure that any return/resettlement/relocation of IDPs is carried out in a voluntary, safe and dignified manner, in line with the IASC (Inter-Agency Standing Committee) Framework on Durable Solutions for IDPs.

### **Regarding human rights:**

- Ensure the inclusion of human rights and transitional justice as part of the 21st Century Panglong Conference and the peace process
- Ensure the participation of women in the 21st Century Panglong Conference and in the peace process

### **To those working in partnership with the Myanmar Government:**

- Undertake further research into the related areas of administrative justice and anti-corruption, following which provide appropriate recommendations to the Myanmar Government with the aim of ensuring that those who exercise public functions are held accountable for their actions.
- Initiate and/or host roundtable discussions, talks, etc., with justice sector actors, parliamentarians, policymakers and the broader public on the concept of administrative justice.
- Undertake further research into the area of criminal torts, following which provide appropriate recommendations to the Myanmar Government with the aim of strengthening rights protections, particularly where these may appear to be in tension with the promotion of economic development.

that would inhibit attempts to secure the accountability of public officials. Hence the need for priority action, as stated above.

## **PUBLIC TRUST IN JUDICIAL AUTHORITY**

Respondents indicated that they preferred using non-formal mechanisms to settle their disputes rather than accessing the formal justice system—underscoring the relative legitimacy of non-formal pathways to justice. This preference was in spite of the fact that non-formal mechanisms generally adhered to patriarchal norms.

Respondents clearly trusted their community leaders more than they trusted those with a role in the formal justice sector. They generally perceived judges, law officers and the police to have up-to-date knowledge and sufficient training to carry out their responsibilities, but did not believe they had sufficient resources to carry out their responsibilities. Significantly, respondents did not believe that formal justice sector actors adhere to the shared values of fairness, respect and a lack of corruption. Given that enhancing public trust in the justice system is a priority for those with a role in the justice sector, policies that are directed towards promoting such shared values (as well as principles such as equality before the law, etc.) in communities, especially in the form of increasing transparency, independence and fairness in the adjudication process, will be important.

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

## **PUBLIC TRUST IN JUDICIAL AUTHORITY: KEY RECOMMENDATIONS**

### **Regarding the local administration of justice:**

- Ensure incumbent local administrators are sufficiently equipped to carry out their functions, including by providing the necessary training on substantive equality, gender sensitivity, rule of law principles, due process, accountability, mediation principles, etc.

### **Regarding the judiciary:**

- Assure the independence and accountability of the judiciary in line with international standards, including by ensuring financial autonomy and adequate resources, objective and transparent appointment criteria, judicial accountability and security of tenure.

### **Regarding the transparency of judicial proceedings:**

- Encourage the Office of the Supreme Court of the Union to direct all courts to publicise reasoned court decisions and official court fees in an accessible manner.

### **Regarding professional development:**

- Ensure the integration of continuous professional development (at the regional/state capital level) as part of the professional duties and responsibilities of all justice sector actors.
- Ensure that all public servants receive training on gender and substantive equality prior to commencing duties.

### **Regarding women's access to justice and other services:**

- In consultation with all relevant stakeholders, pilot one-stop-shop services

in Kachin State that assist women on several fronts, including physical and psycho-social health services, legal counsel, legal aid referral and promotion of legal awareness.

### **Regarding land:**

- Support administrative justice policy reform in the area of housing, land and property.
- Ensure that information relating to the process and procedures relating to the return of lands previously seized by the State are disseminated in a public, accessible and transparent manner.

### **Regarding extractive industries:**

- Build on and further efforts at implementing the Extractive Industries Transparency Initiative (EITI) Standard.
- Prioritise the full implementation of EITI in Kachin State, especially with respect to the jade industry.
- Commit the necessary resources to implement and enforce the Myanmar Environmental Impact Assessment Procedures (2015).

### **To those working in partnership with the Myanmar Government:**

- Undertake further targeted research on customary justice systems to determine engagement strategies with such systems.
- Target CLAs for engagement and discussions on gender equality.
- Initiate and/or host roundtable discussions, talks, etc., with justice sector actors, on the concept of substantive equality, equality before the law, etc.

# ANNEX I

## RESEARCH METHODOLOGY

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

### RESEARCH QUESTIONS AND INSTRUMENTS

The research sought to answer three main questions:

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

The study adopted mixed approaches, utilising a structured interview questionnaire at the household level<sup>80</sup>, which was supplemented by focus group discussions at the village/ward level and key informant interviews at the individual level.

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

and challenges encountered by these actors when carrying out their respective duties and responsibilities.

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

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

### STUDY SAMPLE

The study was conducted in four selected townships (one per district) across Kachin State: Myitkyina, Banmaw<sup>81</sup>, Putao and Moe Nyin<sup>82</sup>. These townships also host their respective district-level offices.

In each township, two wards and/or villages were purposively selected in close consultation with GAD officials. Of the eight study sites, three were rural villages and five were urban wards. The study was also carried out in two IDP camps in Myitkyina and Banmaw Townships (one camp per township). The study did not include non-government-controlled areas.

80 The questionnaire was marginally adapted for administration in IDP camps (see footnote 71).

81 Also spelt Bhamo.

82 Also spelt Mohnyin.

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

Table 1 Sample Size

Township	Household Structured Interviews		Focus Group Discussions		In-depth Interviews		Semi-structured Interviews	
	F	M	F	M	F	M	CLA Representatives*	State Officials**
Myitkyina	73	57	20	18	10	15	14	12
Banmaw	73	56	19	22	5	11	--	11
Putao	37	35	13	14	4	13	12	16
Moe Nyin	24	45	13	12	9	13	2	15
<b>TOTAL</b>	<b>207</b>	<b>193</b>	<b>65</b>	<b>66</b>	<b>28</b>	<b>62</b>	<b>28</b>	<b>54</b>

\* At both township and state levels

\*\* At both township and district levels

Table 1(a) Sample Size (Non-IDP and IDP Respondents)

Township	Non-IDP Respondents						IDP Respondents					
	Household Structured Interviews		Focus Group Discussions		Key Informant Interviews		Household Structured Interviews		Focus Group Discussions		Key Informant Interviews	
	F	M	F	M	F	M	F	M	F	M	F	M
Myitkyina	45	41	13	13	7	13	28	16	7	5	3	2
Banmaw	44	29	13	15	4	8	29	27	6	7	1	3
Putao	37	35	13	14	4	13	--					
Moe Nyin	24	45	13	12	9	13	--					
<b>TOTAL</b>	150	150	52	54	24	47	57	43	13	12	4	5
	300		106		71		100		25		9	

## DATA COLLECTION

Field research was carried out between 13 January and 4 February 2016.

Two international consultants led the field work and also carried out interviews with state officials and representatives of CLAs. A Myanmar research organisation, Enlightened Myanmar Research Foundation (EMReF), which had some prior experience on rule of law/access to justice/plural legal systems studies, was contracted by UNDP to carry out research at the ward and village levels. The EMReF team spent three days in each study site conducting interviews and discussions.

Eleven interpreters (nine students/graduates from Myitkyina and Moe Nyin Universities and two others with prior interpretation experience) were hired and trained for the ward- and village-level field research: four Jinghpaw–Myanmar interpreters, four Lisu–Myanmar interpreters and three Rawang–Myanmar interpreters.

## ETHICAL CONSIDERATIONS

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

## RESEARCH CHALLENGES AND LIMITATIONS

### Research Preparation

Preparation for the research – including study design, development and translation of re-

search instruments, and training of the research team – was carried out in less than two months. While the aims of the research have been met in Kachin State, the process would have benefitted from along their preparation period, including more time for revision of research instruments after the pre-test.

### Data Collection and Subject Matter

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

### Language Barriers

While efforts were undertaken to recruit and train Jinghpaw, Lisu and Rawang language interpreters for the research, the possibility of some respondents misunderstanding certain questions that were asked of them cannot be eliminated, given the difference in meanings of certain ideas and concepts in particular languages.

### Representativeness

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

# ANNEX II

## SUPPLEMENTARY FIGURES AND TABLES

### CHAPTER 2: CHARACTERISTICS OF STUDY SITES AND RESPONDENTS

Figure 2.1(a) Levels of Education by Sex

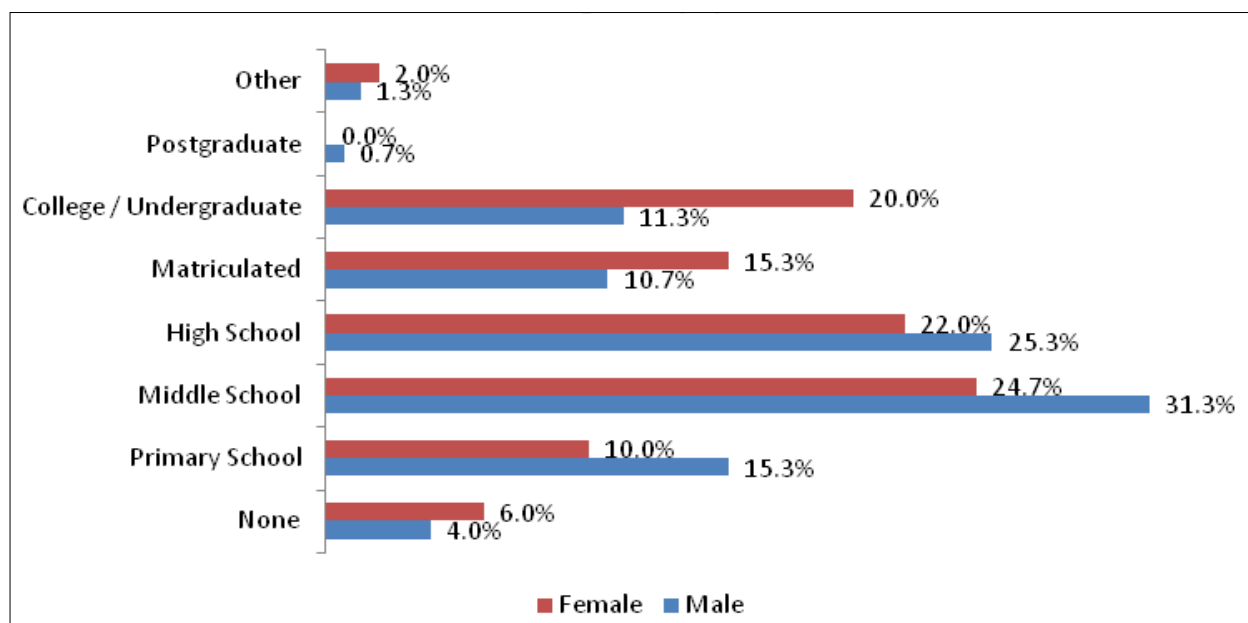


Figure 2.1(b) Myanmar Language Literacy by Sex

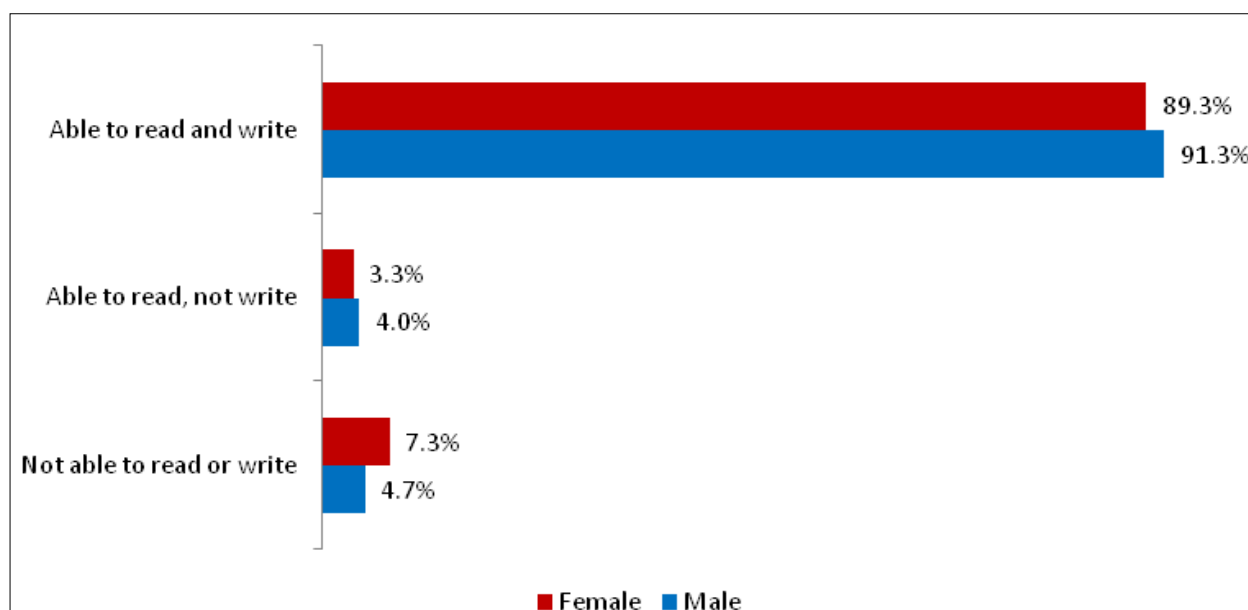


Figure 2.1(c) Myanmar Language Literacy by Ethnicity

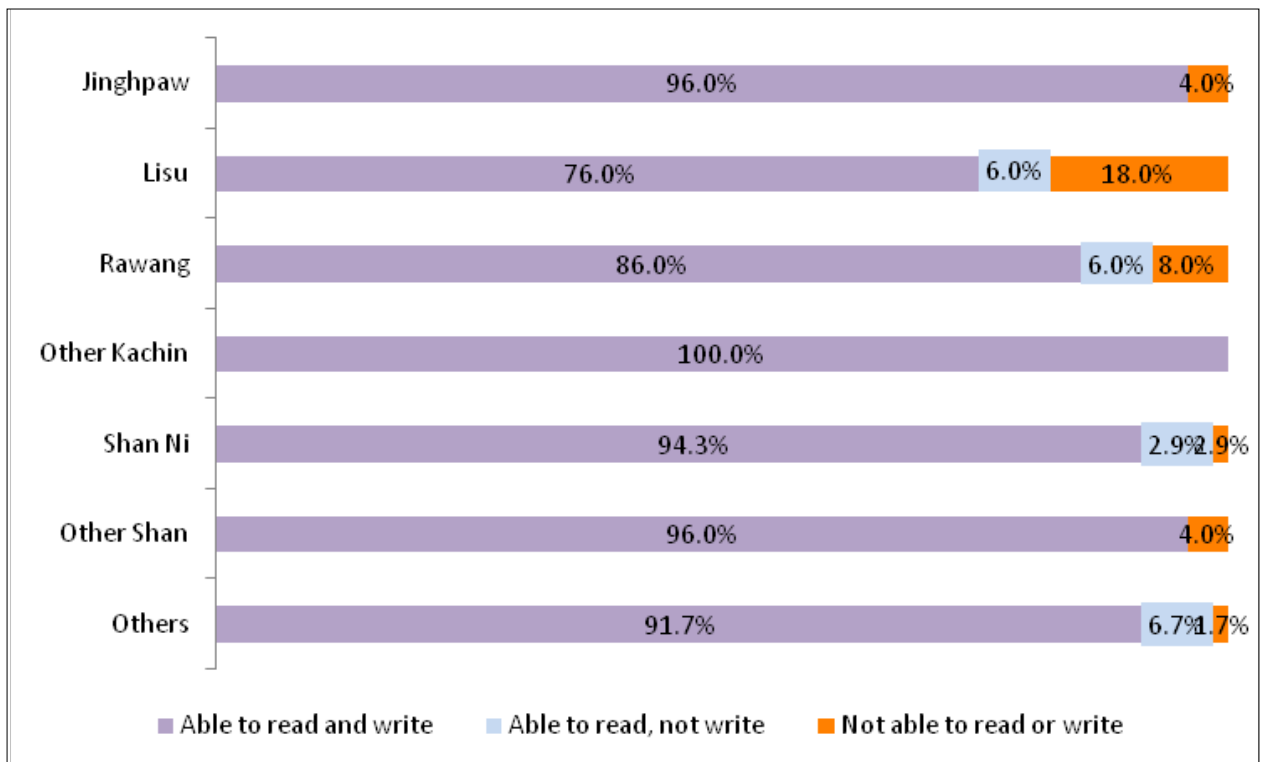


Figure 2.1(d) Myanmar Language Illiteracy by Ethnicity

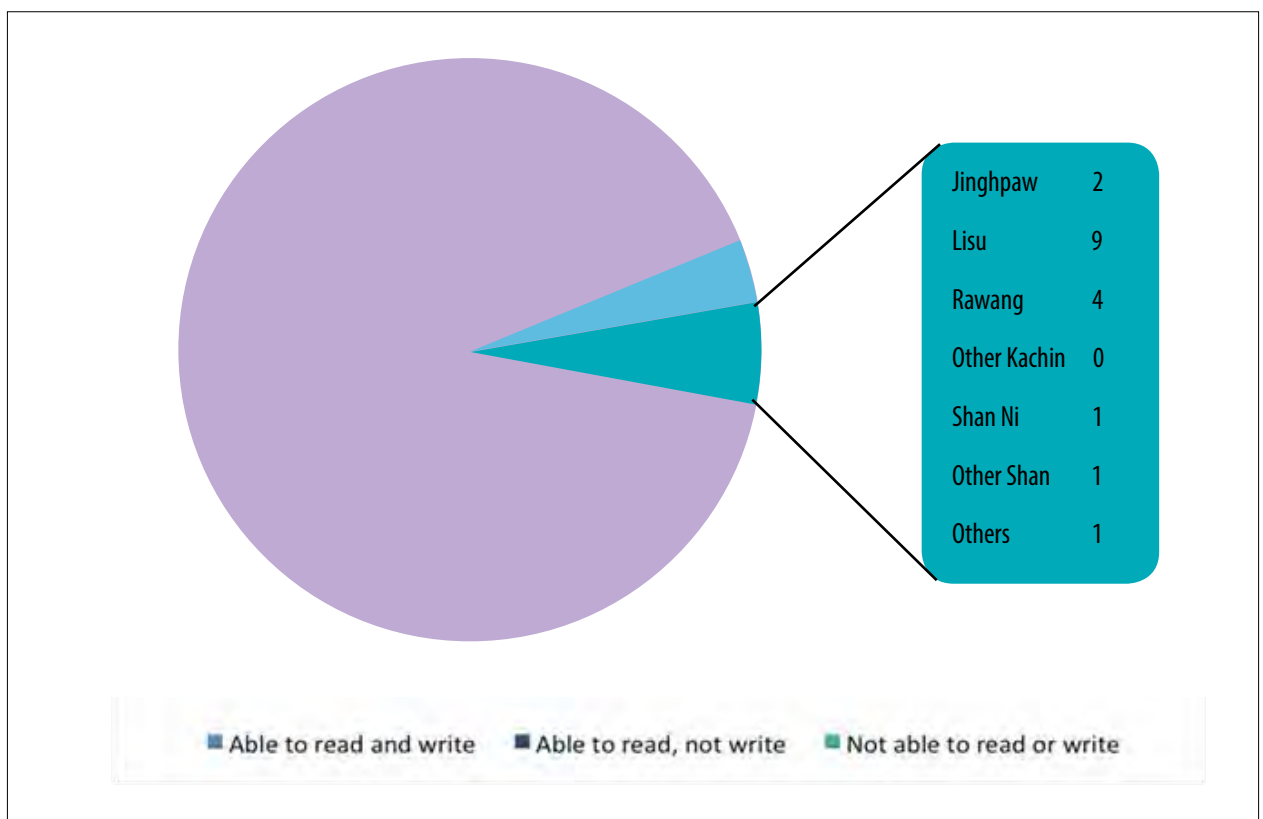


Figure 2.2(a) Household Assets by Income Levels

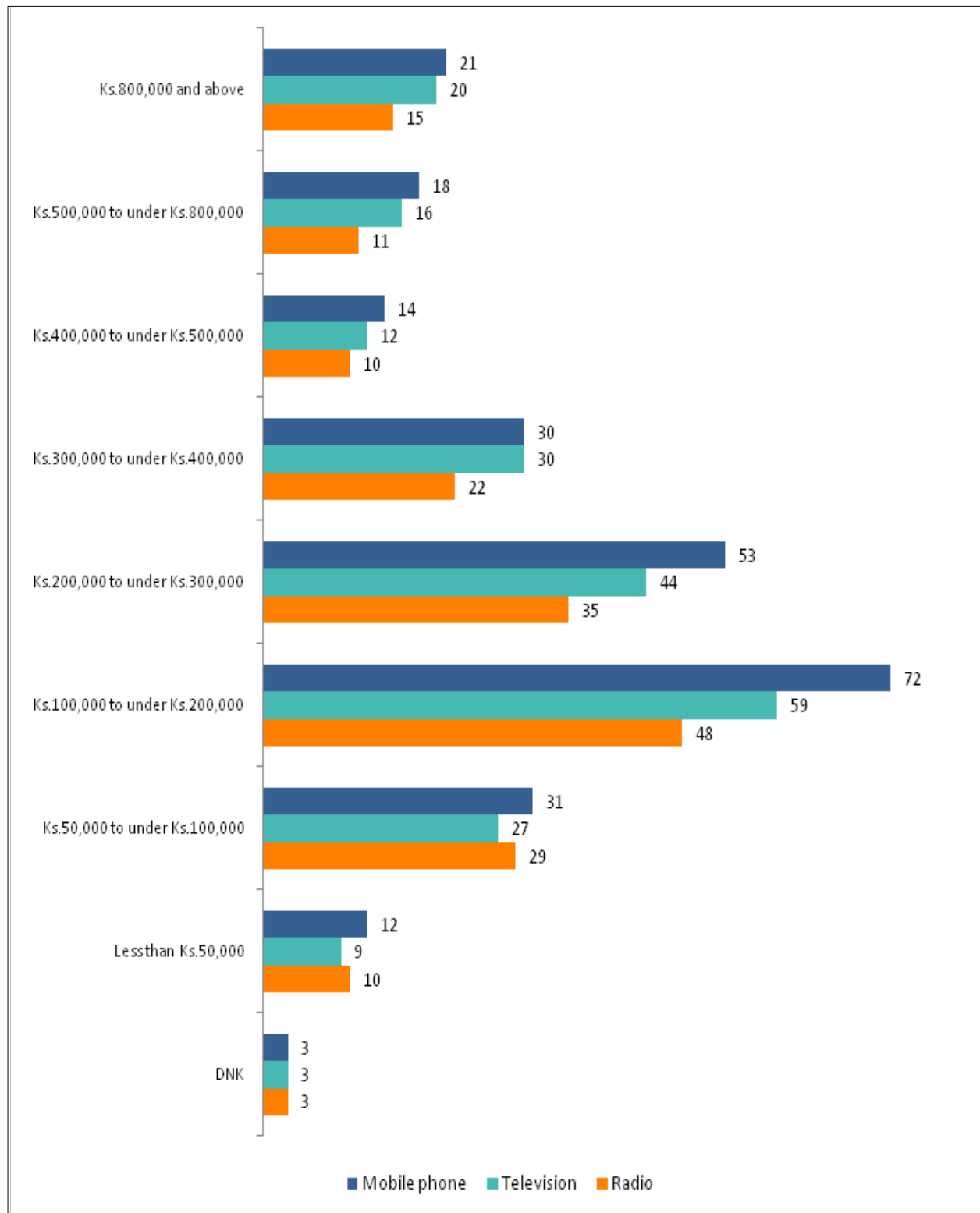




Figure 2.3(b) Access to Information by Sex

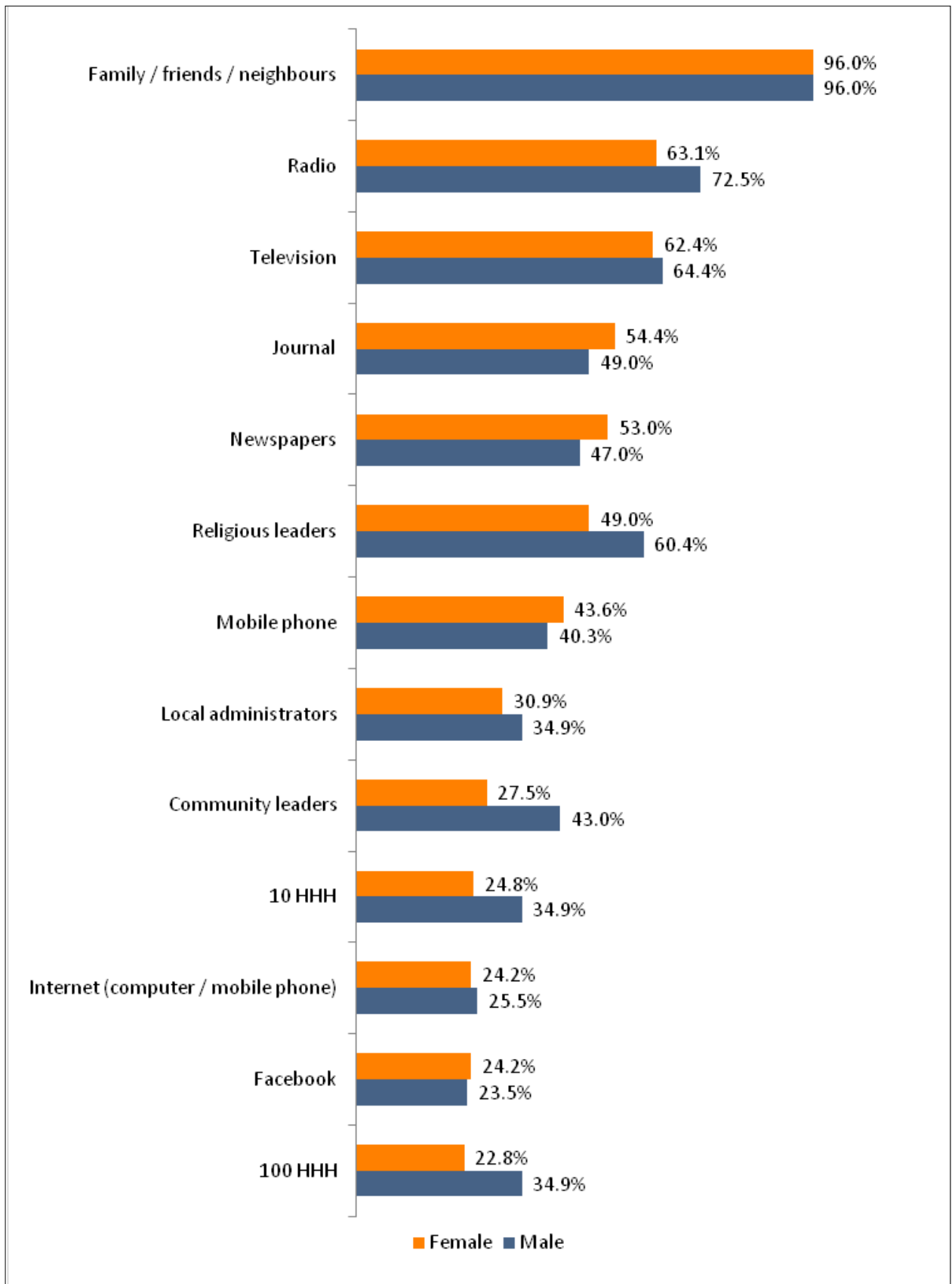
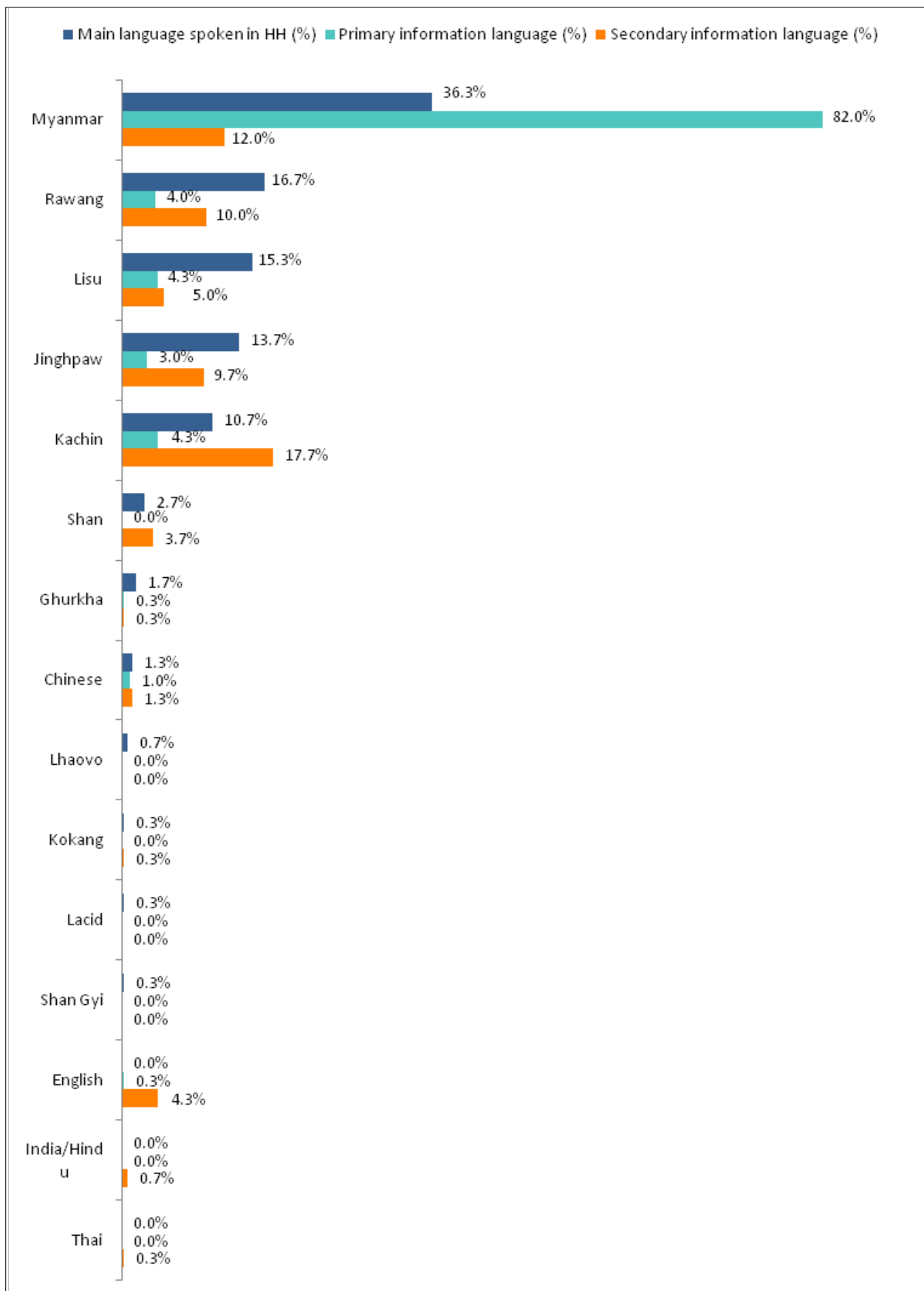


Figure 2.3(c) Languages



# CHAPTER 3: FINDINGS – PERCEPTIONS OF JUSTICE AND LAW

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

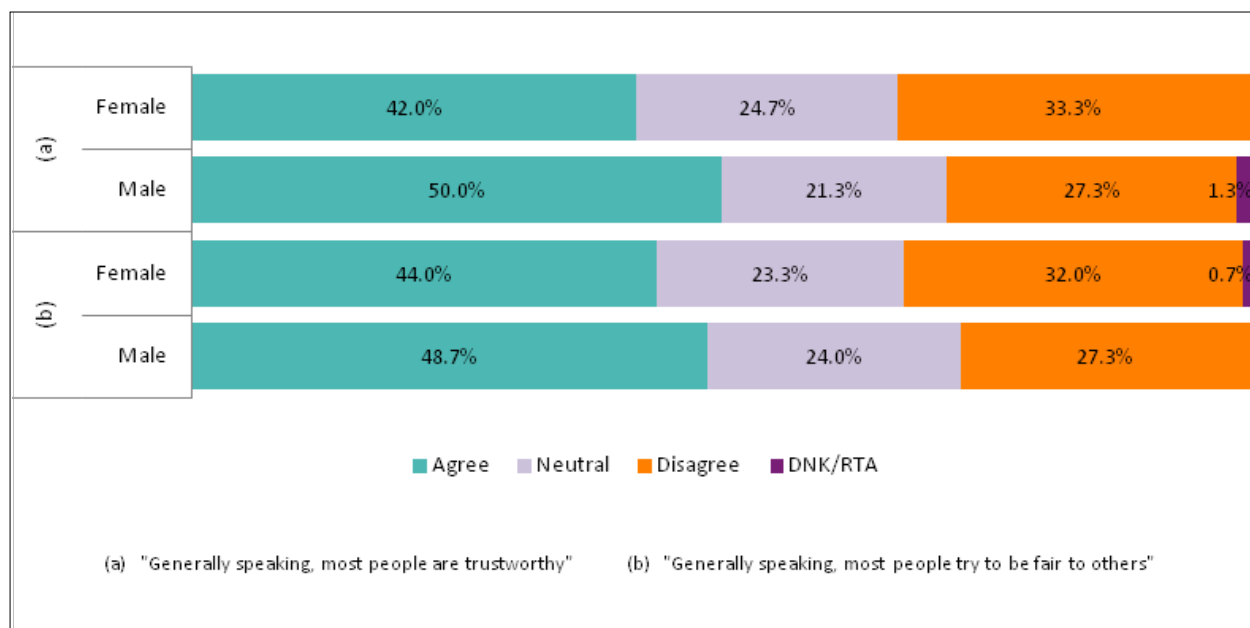


Figure 3.1(b) Social Trust 'A' by Religion

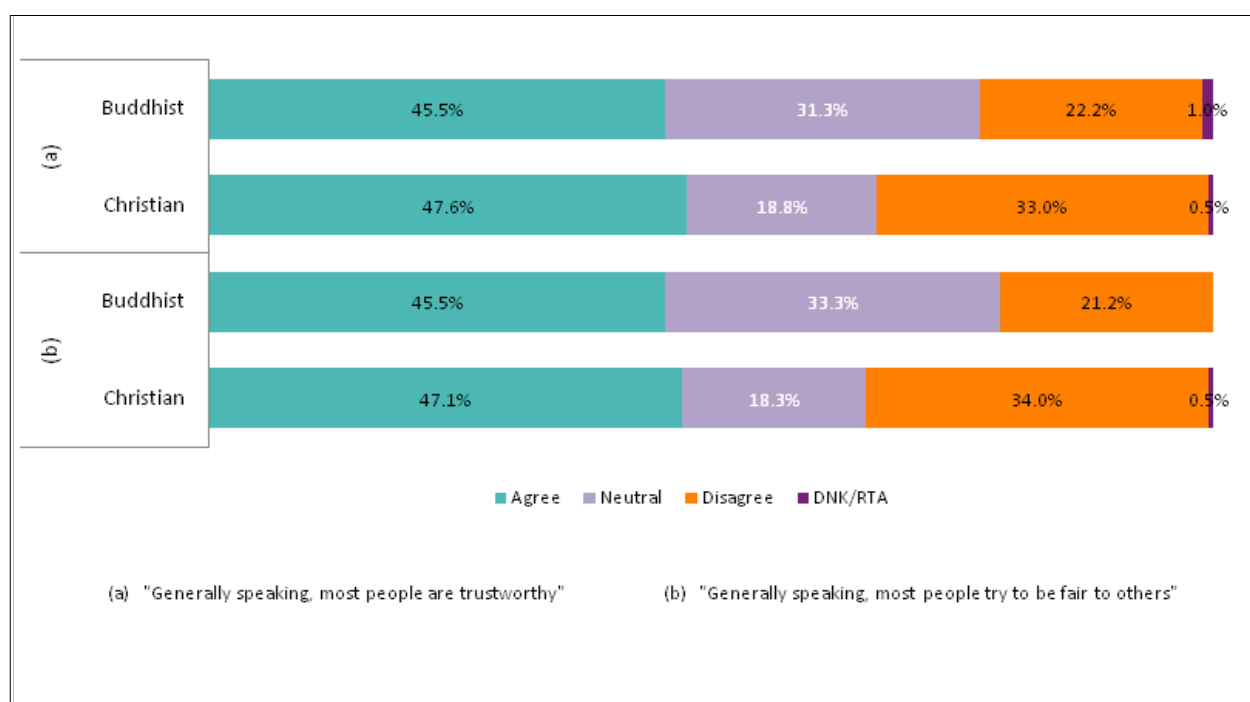


Figure 3.2(a) Social Trust 'B' by Sex



Figure 3.2(b) Social Trust 'B' by Religion

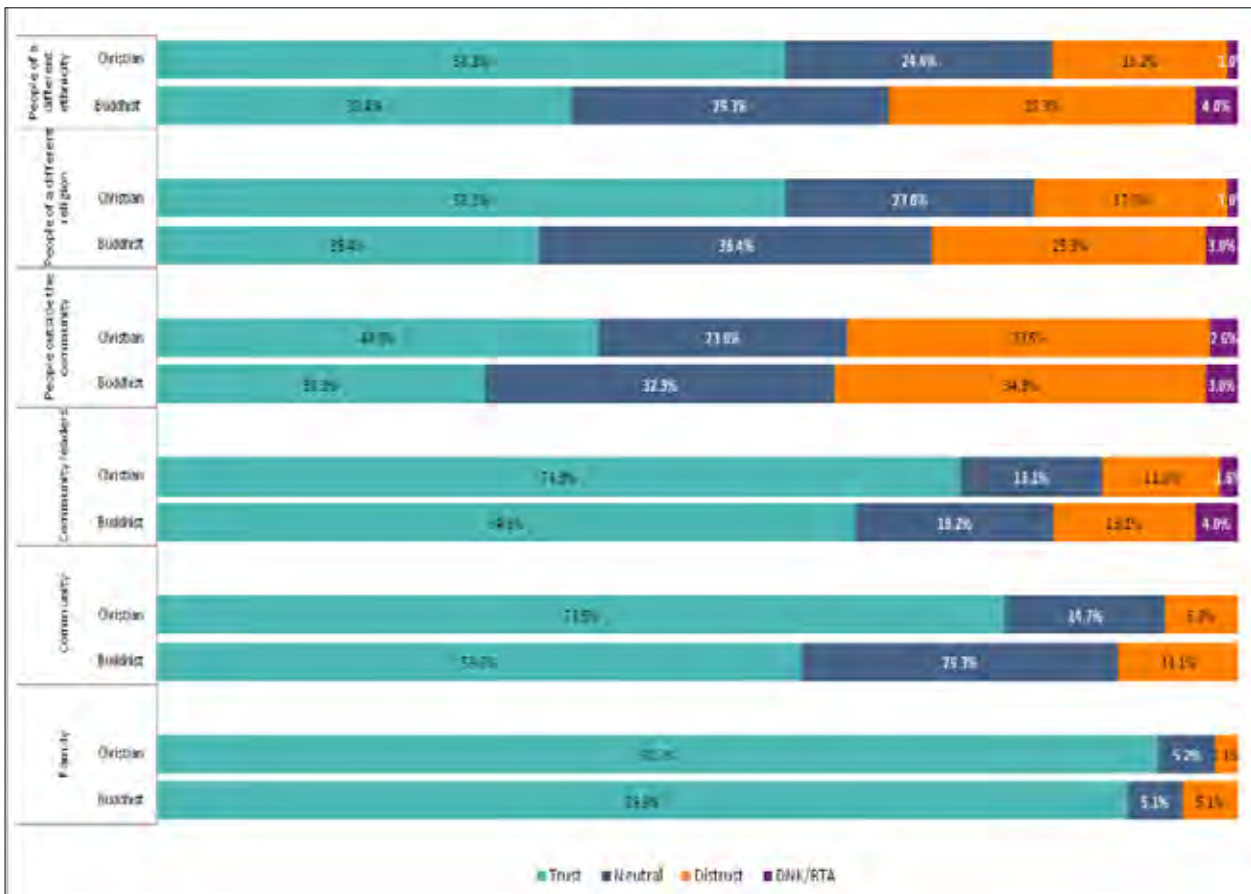


Table 3.1(a) Perceptions of Justice by Sex

		M	F
FORMAL VS. INFORMAL	(a) Some disputes are best settled in the Courts.	19.3%	14.0%
	(b) It is better for most disputes to be settled within the community.	67.3%	76.0%
EQUALITY	(a) Every person deserves equal care and concern by the government regardless of religion or ethnicity.	92.7%	88.7%
	(b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups.	6.0%	9.3%
FATE VS. REMEDY	(a) Injustices can befall people, and there is nothing they can do about it because it is their fate.	9.3%	5.3%
	(b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome.	87.3%	91.3%
PRIVATE VS. PUBLIC	(a) Matters within a family are private and internal to it, and a married man has complete authority over his spouse and children.	45.3%	34.7%
	(b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others.	40.7%	49.3%
TRANSITIONAL JUSTICE	(a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar.	53.3%	33.3%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	41.3%	58.7%
PROCESS VS. OUTCOME	(a) Being fairly treated throughout a process is more important than obtaining a favourable outcome.	98.7%	96.7%
	(b) Obtaining a favourable outcome is more important than being treated fairly during a process.	1.3%	2.7%
GENDER	(a) Men and women have equal value, but women have greater responsibility to care about culture and tradition.	2.7%	2.7%
	(b) Men and women have equal value, and both have equal responsibility to care about culture and tradition.	95.3%	96.7%
INDIVIDUAL VS. COMMUNITY	(a) Individual rights must be as respected as communal harmony.	70.7%	70.0%
	(b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised.	27.3%	25.3%

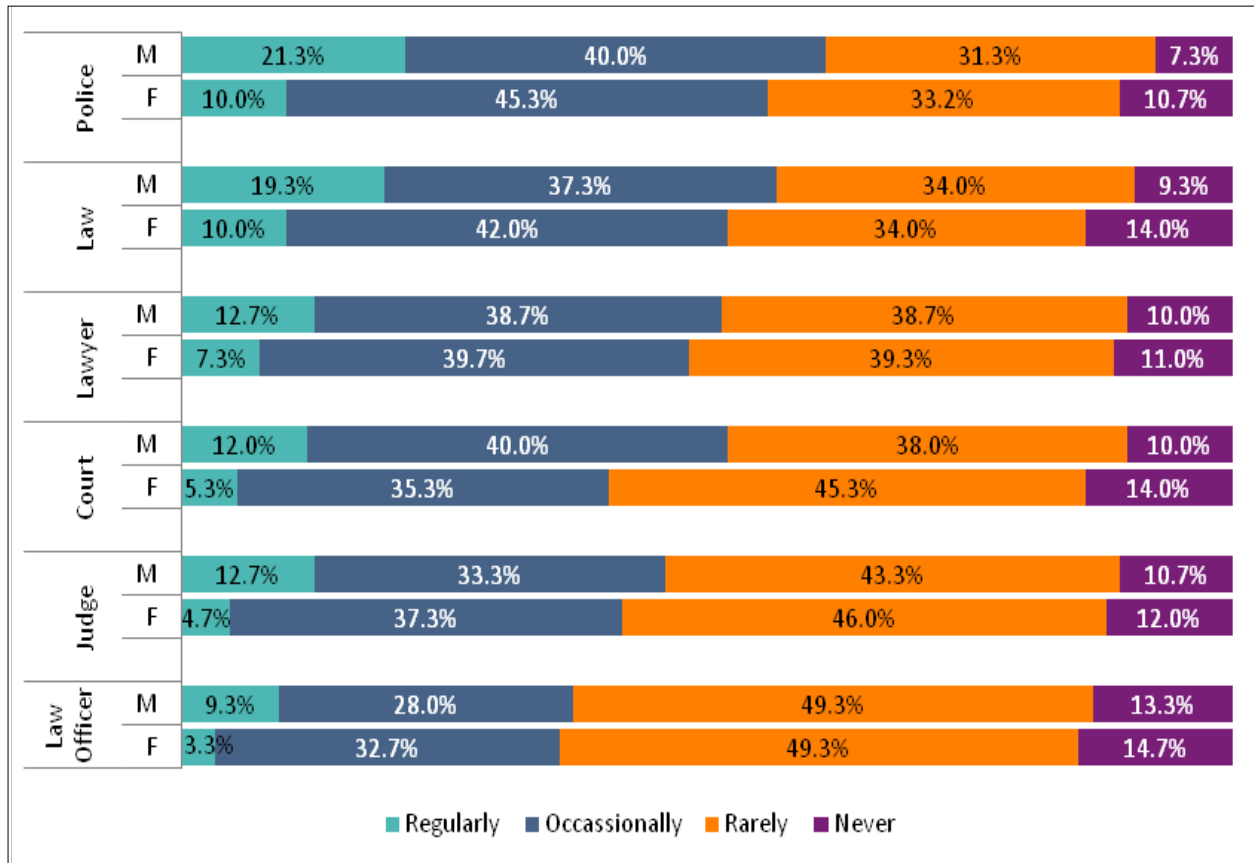
Table 3.1(b) Perceptions of Justice by Urban/Rural Locations

		U	R
FORMAL VS. INFORMAL	(a) Some disputes are best settled in the Courts.	16.4%	17.1%
	(b) It is better for most disputes to be settled within the community.	<b>71.8%</b>	<b>71.4%</b>
EQUALITY	(a) Every person deserves equal care and concern by the government regardless of religion or ethnicity.	<b>91.3%</b>	<b>89.5%</b>
	(b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups.	6.7%	9.5%
FATE VS. REMEDY	(a) Injustices can befall people, and there is nothing they can do about it because it is their fate.	7.2%	7.6%
	(b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome.	<b>89.7%</b>	<b>88.6%</b>
PRIVATE VS. PUBLIC	(a) Matters within a family are private and internal to it, and a married man has complete authority over his spouse and children.	<b>45.6%</b>	29.5%
	(b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others.	43.1%	<b>48.6%</b>
TRANSITIONAL JUSTICE	(a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar.	<b>40.0%</b>	49.5%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	51.8%	<b>46.7%</b>
PROCESS VS. OUTCOME	(a) Being fairly treated throughout a process is more important than obtaining a favourable outcome.	<b>98.5%</b>	<b>96.2%</b>
	(b) Obtaining a favourable outcome is more important than being treated fairly during a process.	1.0%	3.8%
GENDER	(a) Men and women have equal value, but women have greater responsibility to care about culture and tradition.	1.0%	5.7%
	(b) Men and women have equal value, and both have equal responsibility to care about culture and tradition.	<b>97.9%</b>	<b>92.4%</b>
INDIVIDUAL VS. COMMUNITY	(a) Individual rights must be as respected as communal harmony.	<b>75.4%</b>	<b>61.0%</b>
	(b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised.	22.1%	34.3%

Table 3.1(c) Perceptions of Justice by Religion

		B	C
FORMAL VS. INFORMAL	(a) Some disputes are best settled in the Courts.	21.2%	15.2%
	(b) It is better for most disputes to be settled within the community.	59.6%	77.0%
EQUALITY	(a) Every person deserves equal care and concern by the government regardless of religion or ethnicity.	89.9%	92.1%
	(b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups.	7.1%	7.3%
FATE VS. REMEDY	(a) Injustices can befall people, and there is nothing they can do about it because it is their fate.	3.0%	9.4%
	(b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome.	90.9%	88.5%
PRIVATE VS. PUBLIC	(a) Matters within a family are private and internal to it, and a married man has complete authority over his spouse and children.	41.4%	37.2%
	(b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others.	47.5%	45.5%
TRANSITIONAL JUSTICE	(a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar.	49.5%	38.7%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	40.4%	56.0%
PROCESS VS. OUTCOME	(a) Being fairly treated throughout a process is more important than obtaining a favourable outcome.	98.0%	97.4%
	(b) Obtaining a favourable outcome is more important than being treated fairly during a process.	1.0%	2.6%
GENDER	(a) Men and women have equal value, but women have greater responsibility to care about culture and tradition.	4.0%	2.1%
	(b) Men and women have equal value, and both have equal responsibility to care about culture and tradition.	93.9%	96.9%
INDIVIDUAL VS. COMMUNITY	(a) Individual rights must be as respected as communal harmony.	64.6%	71.7%
	(b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised.	29.3%	26.2%

Figure 3.4(a) Words in Daily Conversation by Sex





# CHAPTER 5: FINDINGS – DISPUTE SETTLEMENT TRAJECTORIES

Figure 5.2(a) Dispute Settlement Preferences – Hypothetical 1

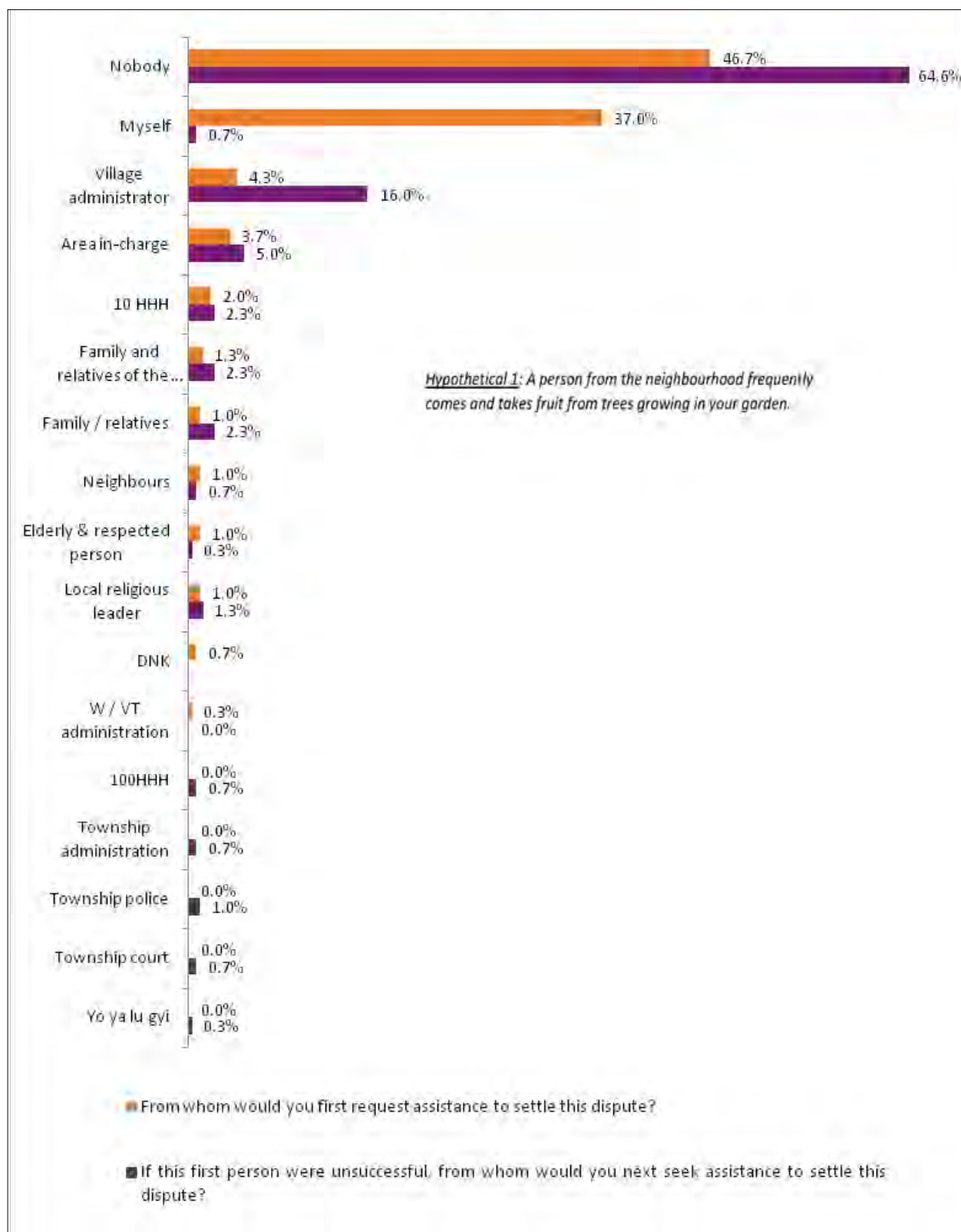


Figure 5.2(b) Dispute Settlement Preferences – Hypothetical 2

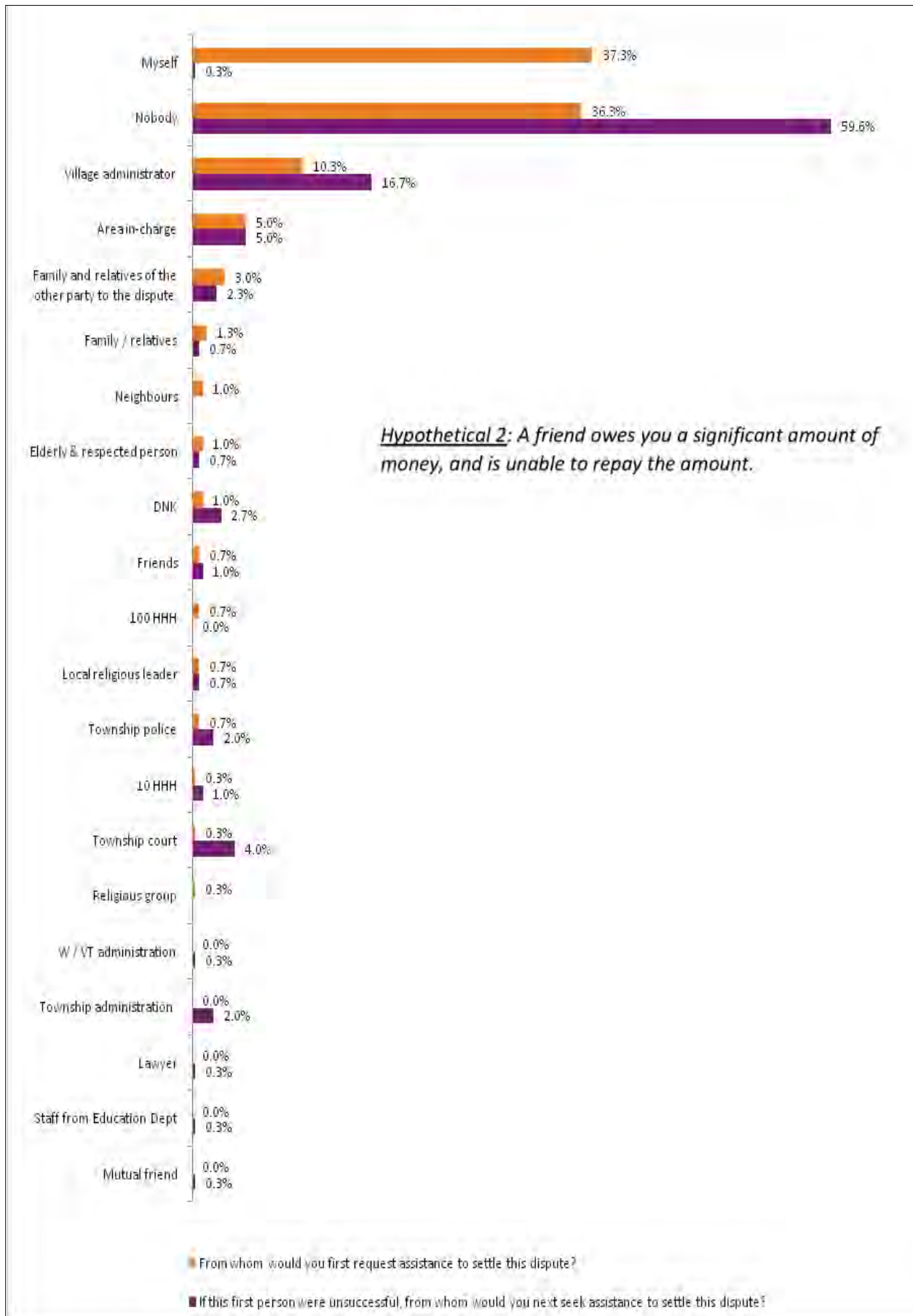


Figure 5.2(c) Dispute Settlement Preferences – Hypothetical 3

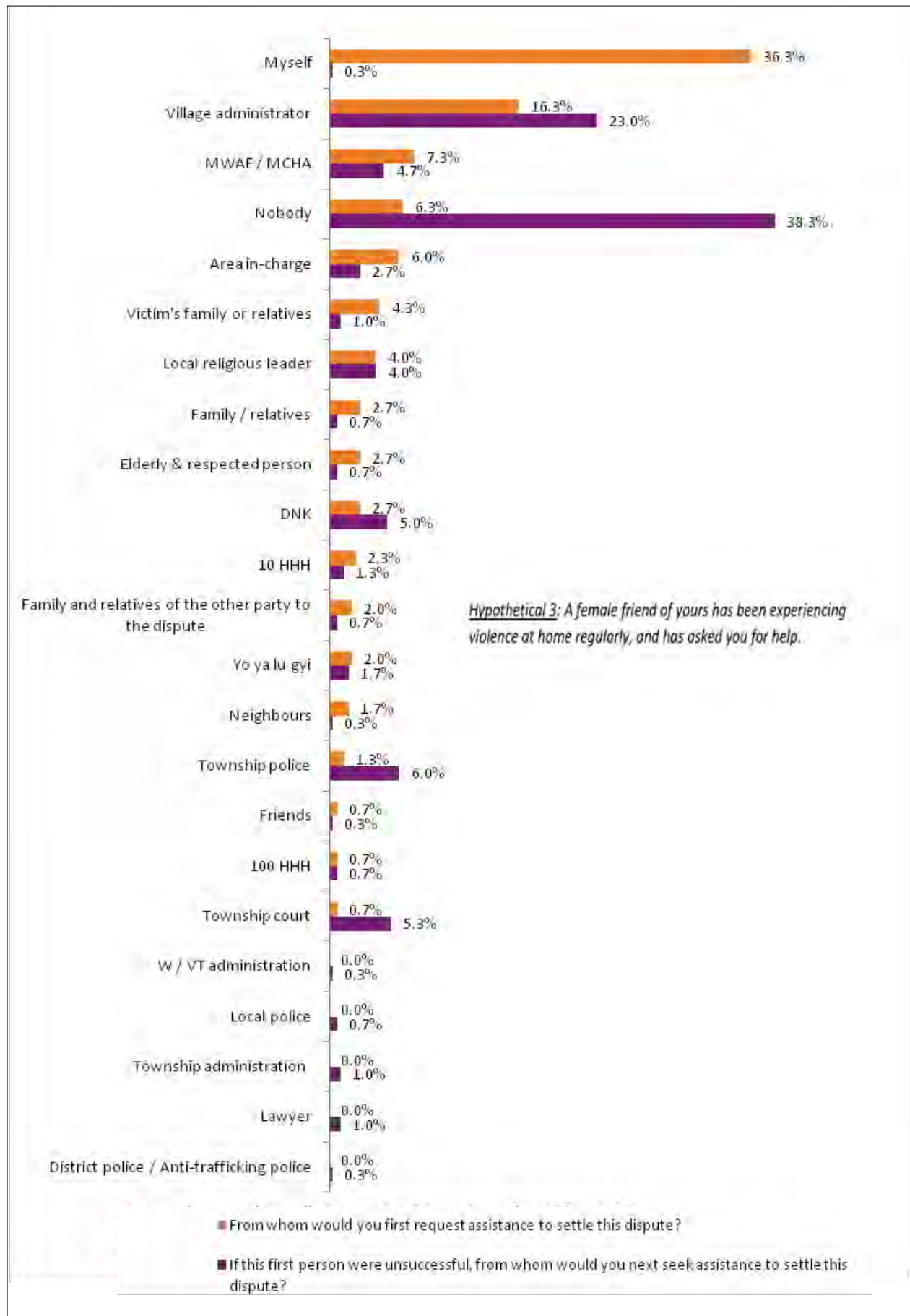


Figure 5.2(d) Dispute Settlement Preferences – Hypothetical 4

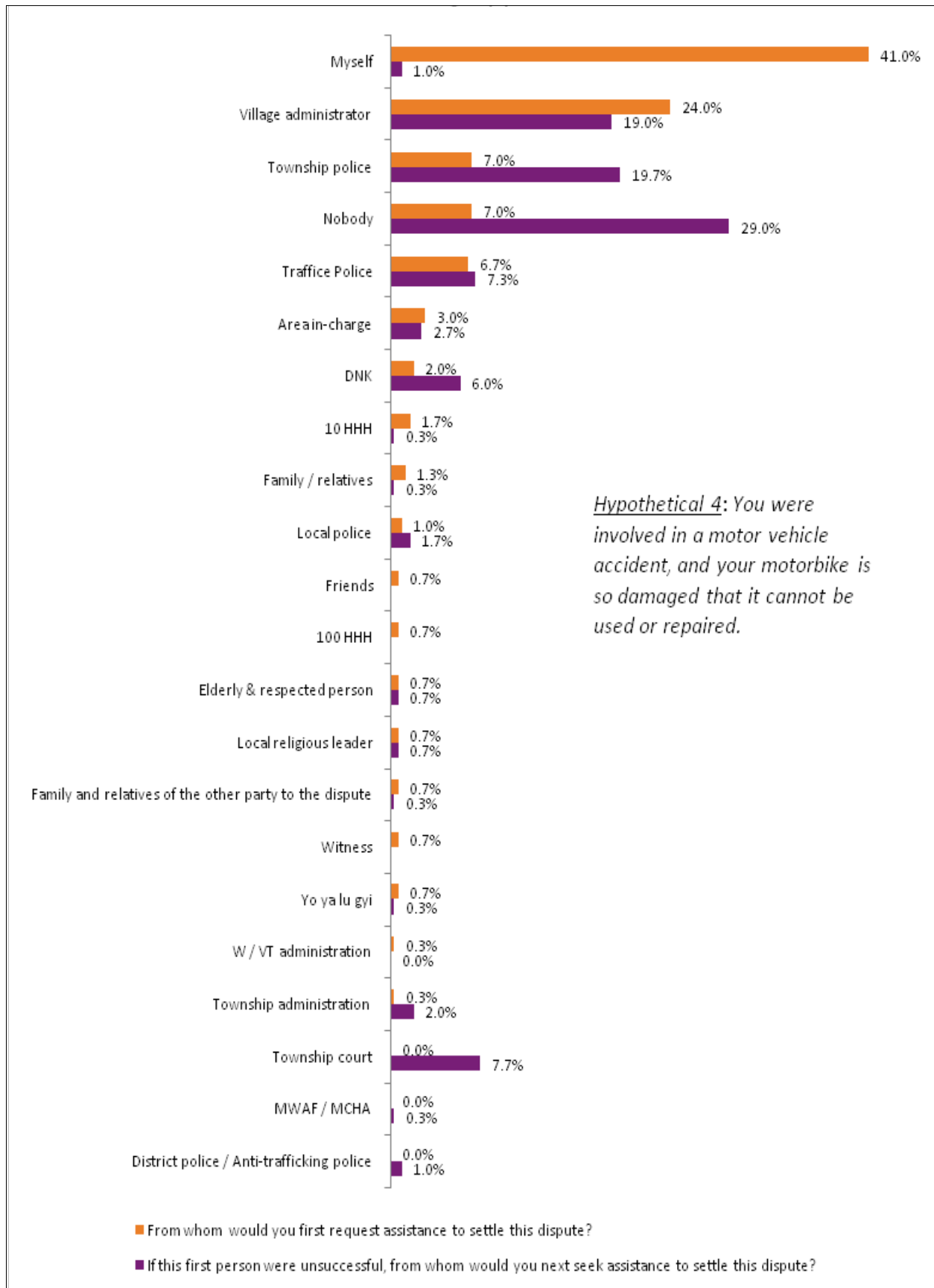


Figure 5.2(e) Dispute Settlement Preferences – Hypothetical 5

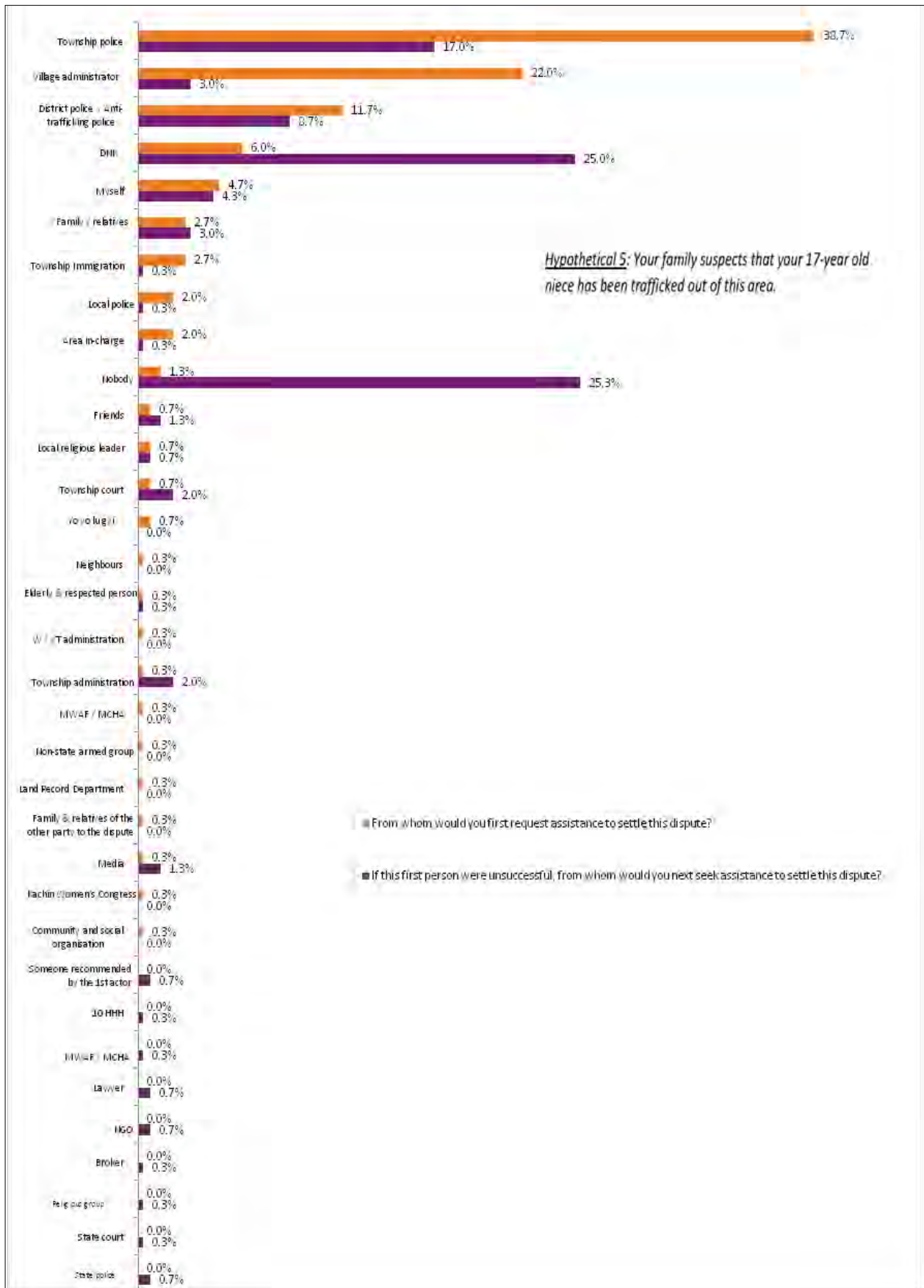
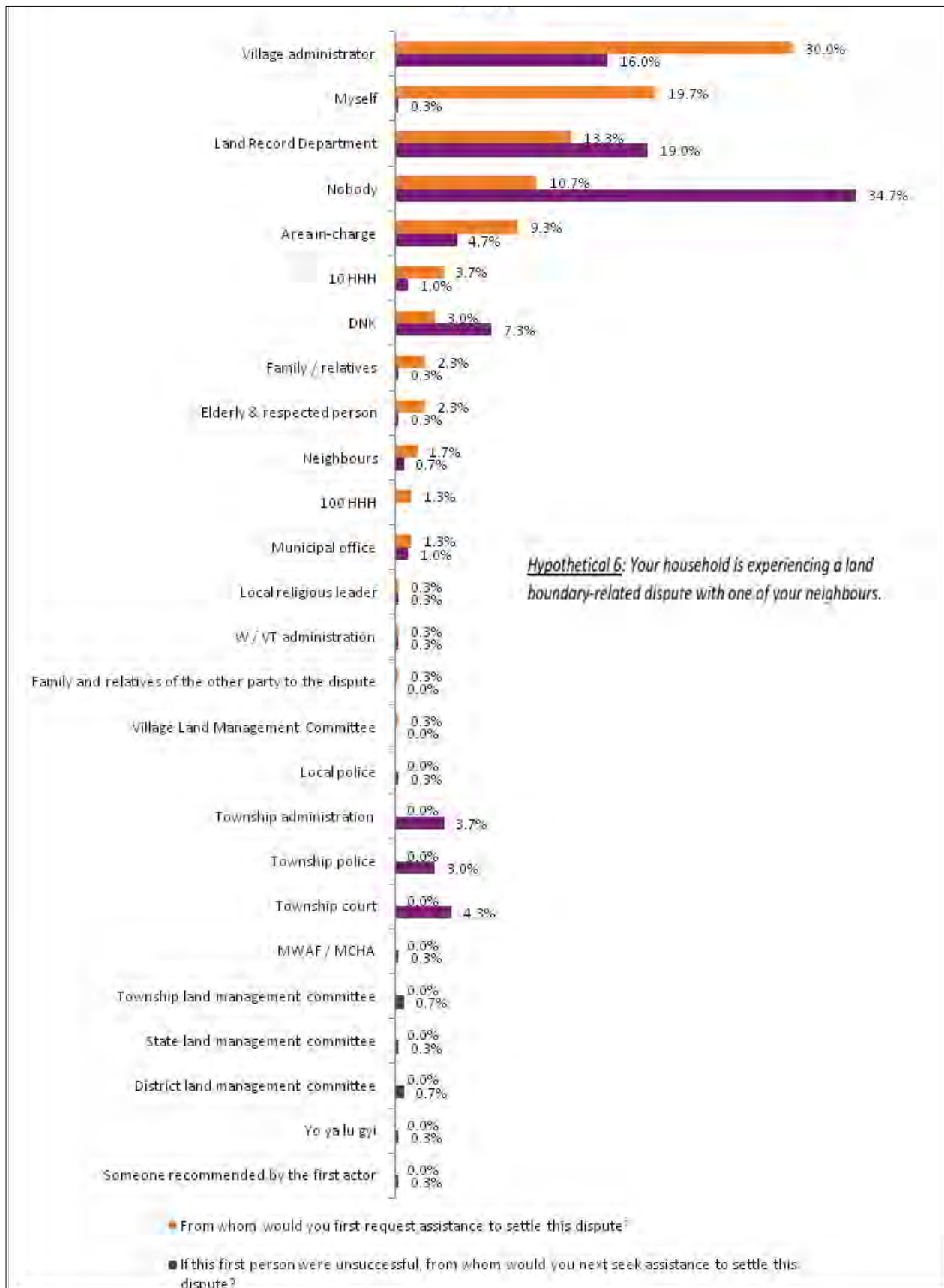
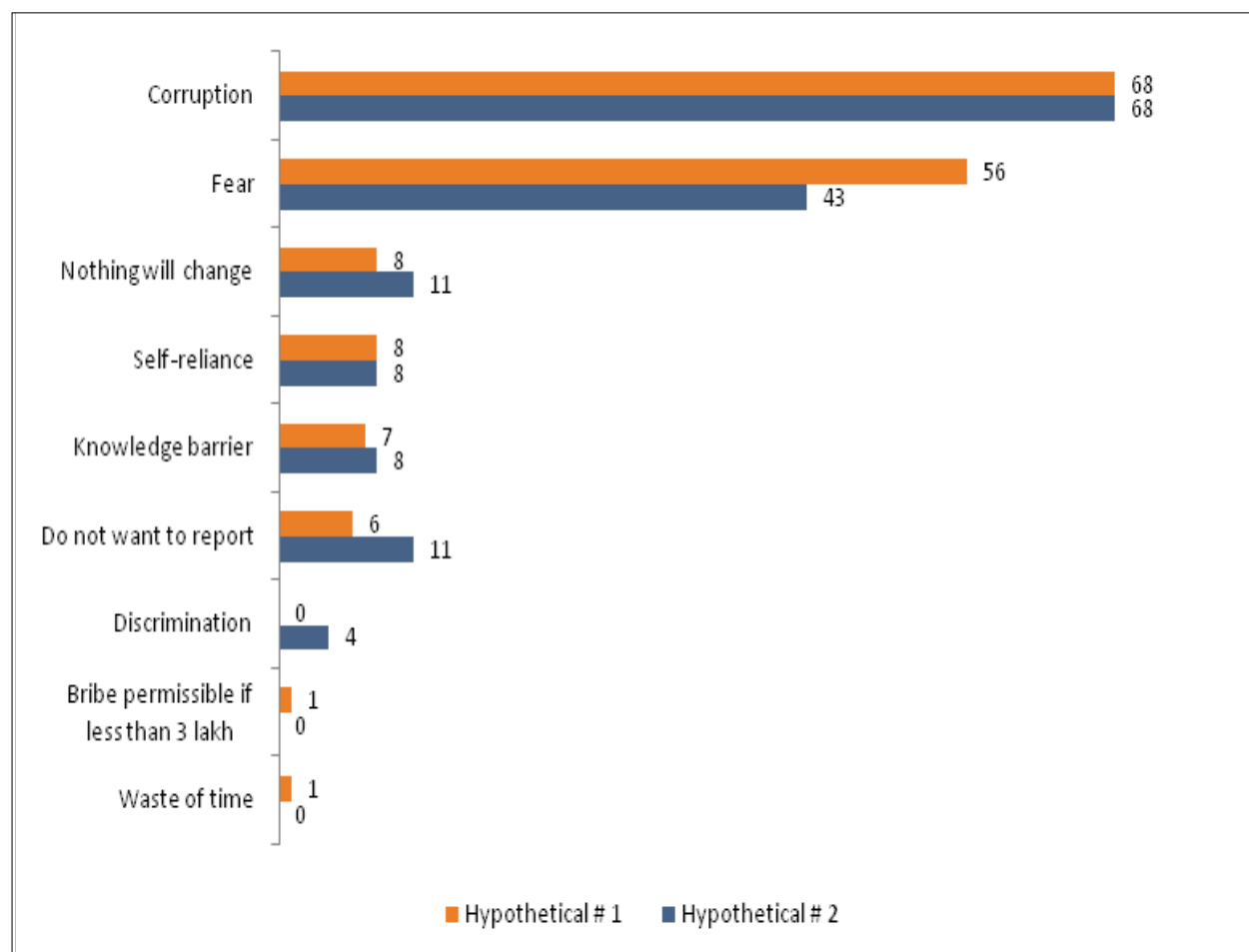


Figure 5.2(f) Dispute Settlement Preferences – Hypothetical 6



# CHAPTER 6: PERCEPTIONS AND ATTITUDES TOWARDS JUSTICE SERVICES

Figure 6.6(a) Barriers against Accountability



# CHAPTER 7: FINDINGS – INTERNALLY DISPLACED POPULATIONS

Figure 7.1(b) Levels of Education by Displacement Status

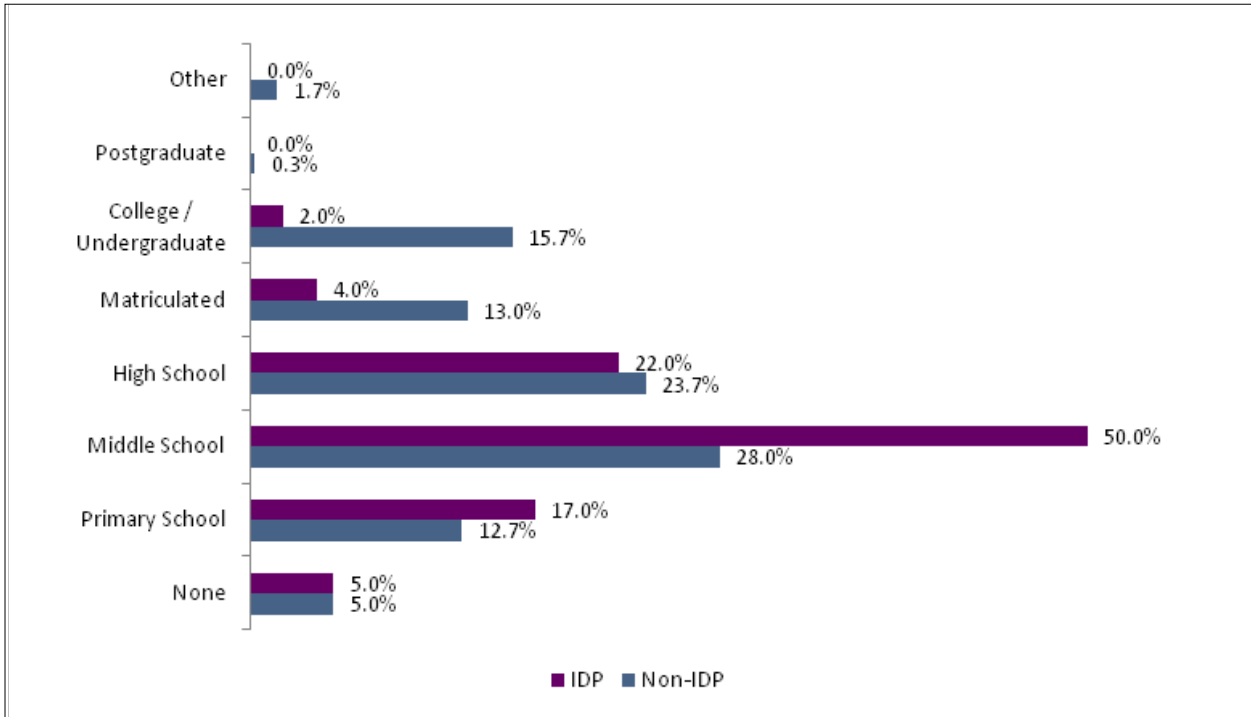


Figure 7.1(b) Levels of Education by Displacement Status

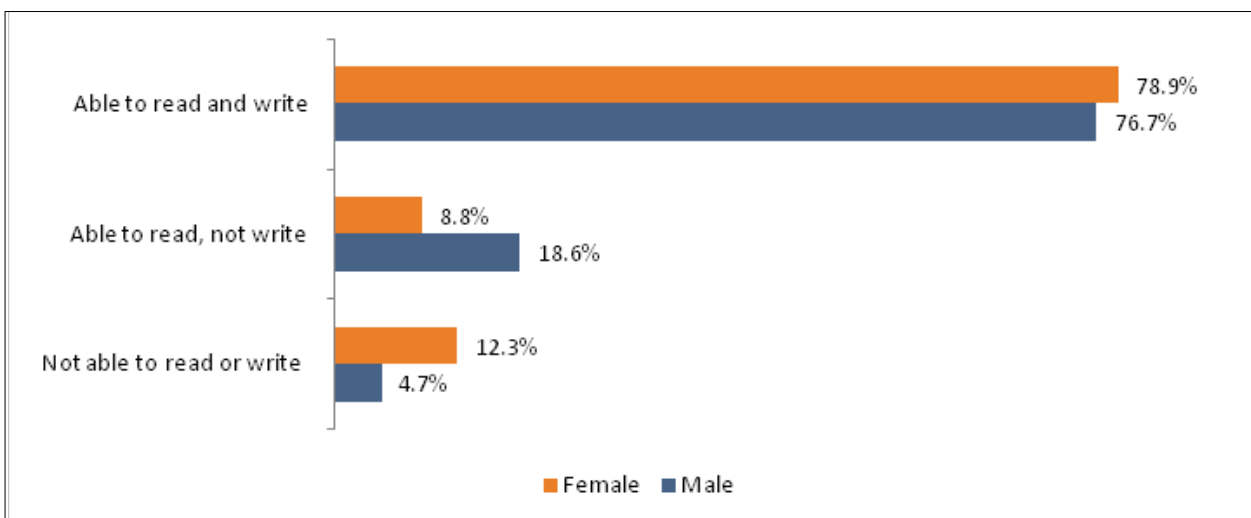




Figure 7.1(d) Myanmar Language Literacy by Displacement Status

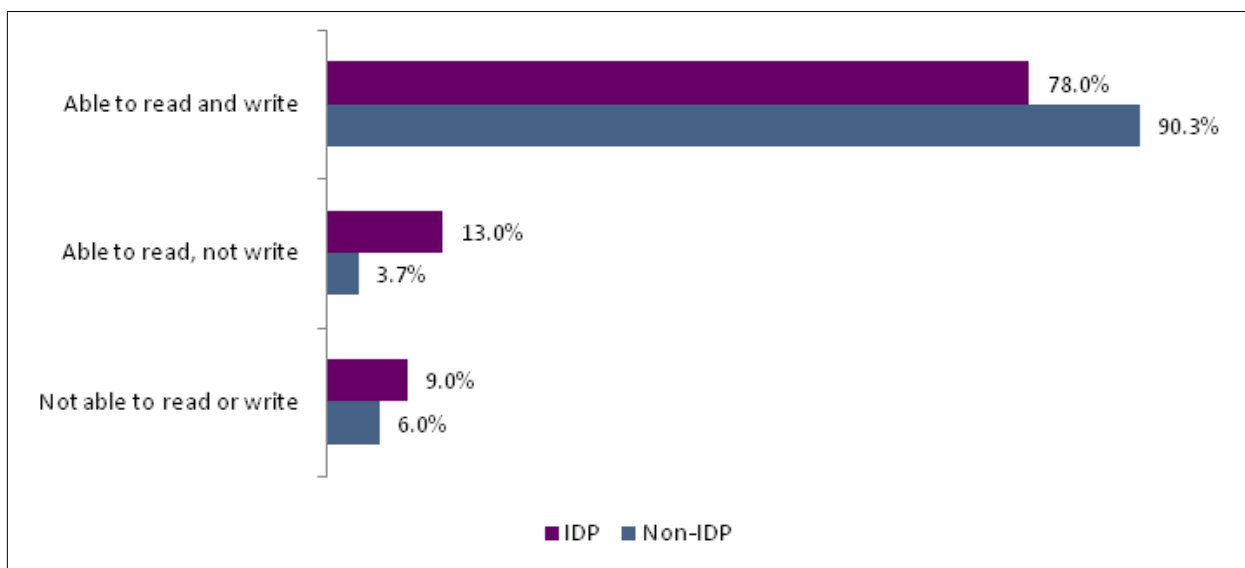


Figure 7.3 Household Assets by Displacement Status

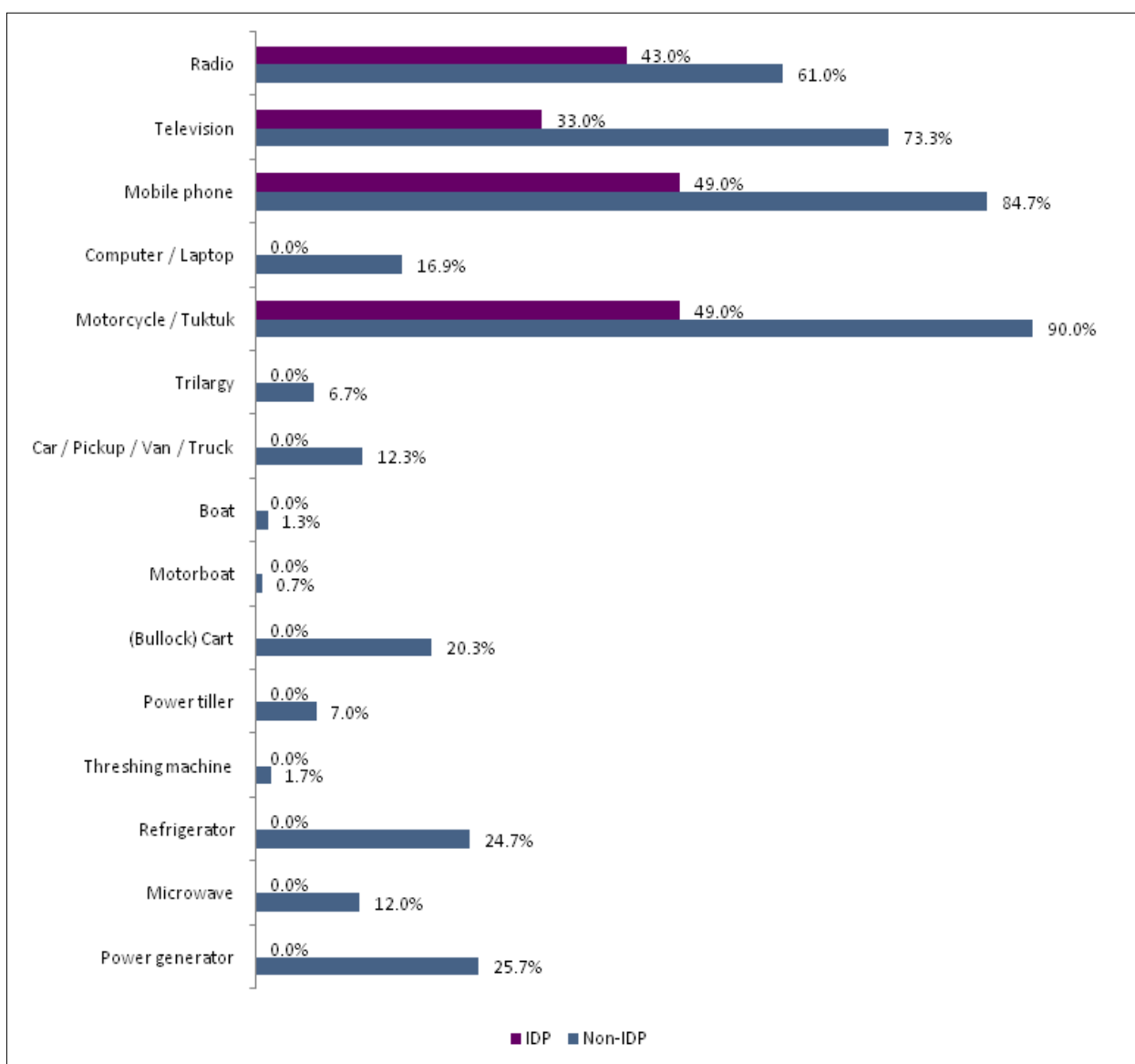


Figure 7.4(b) Access to Information by Sex (IDP Respondents)

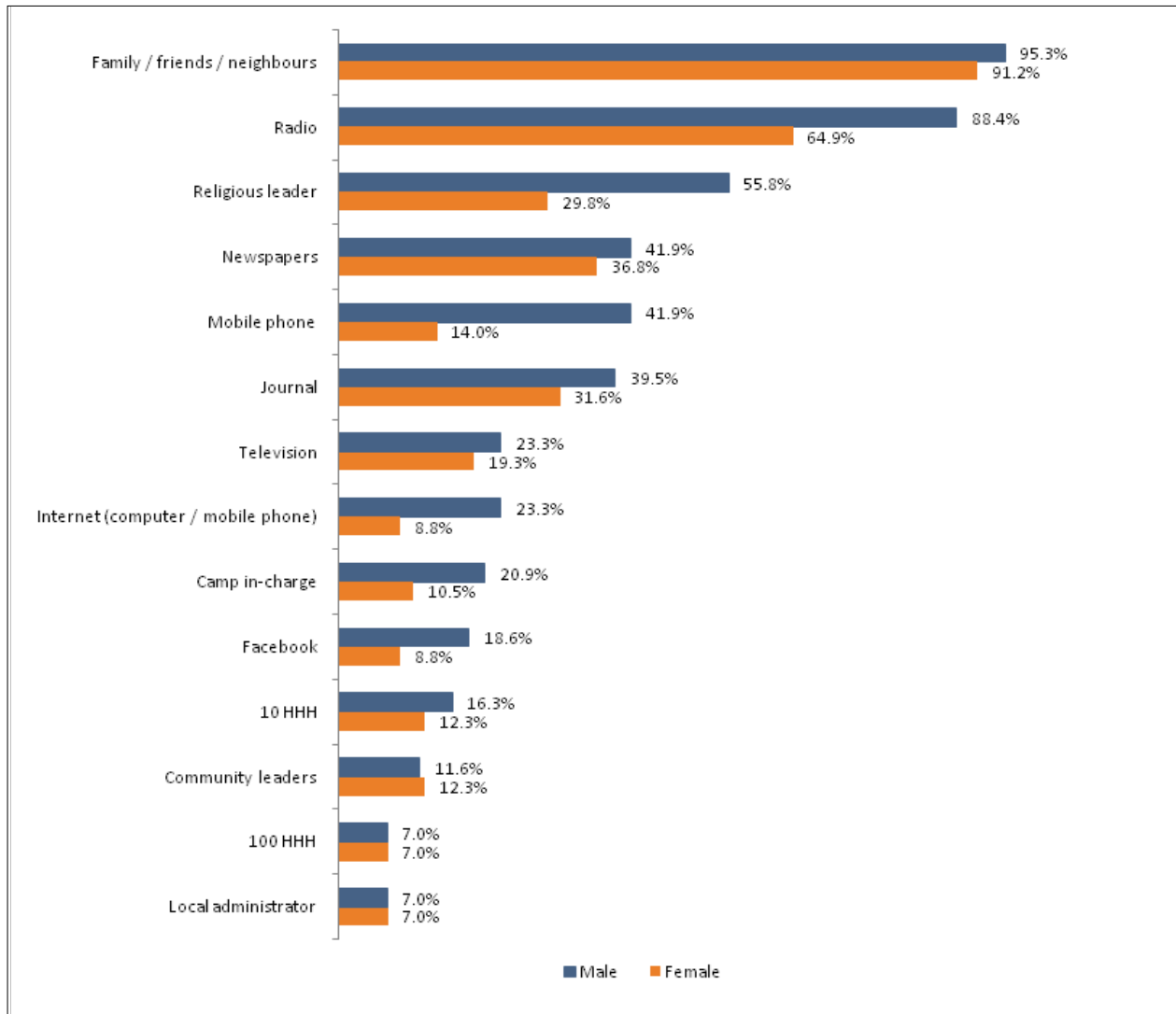


Figure 7.4(c) Languages (IDP Respondents)

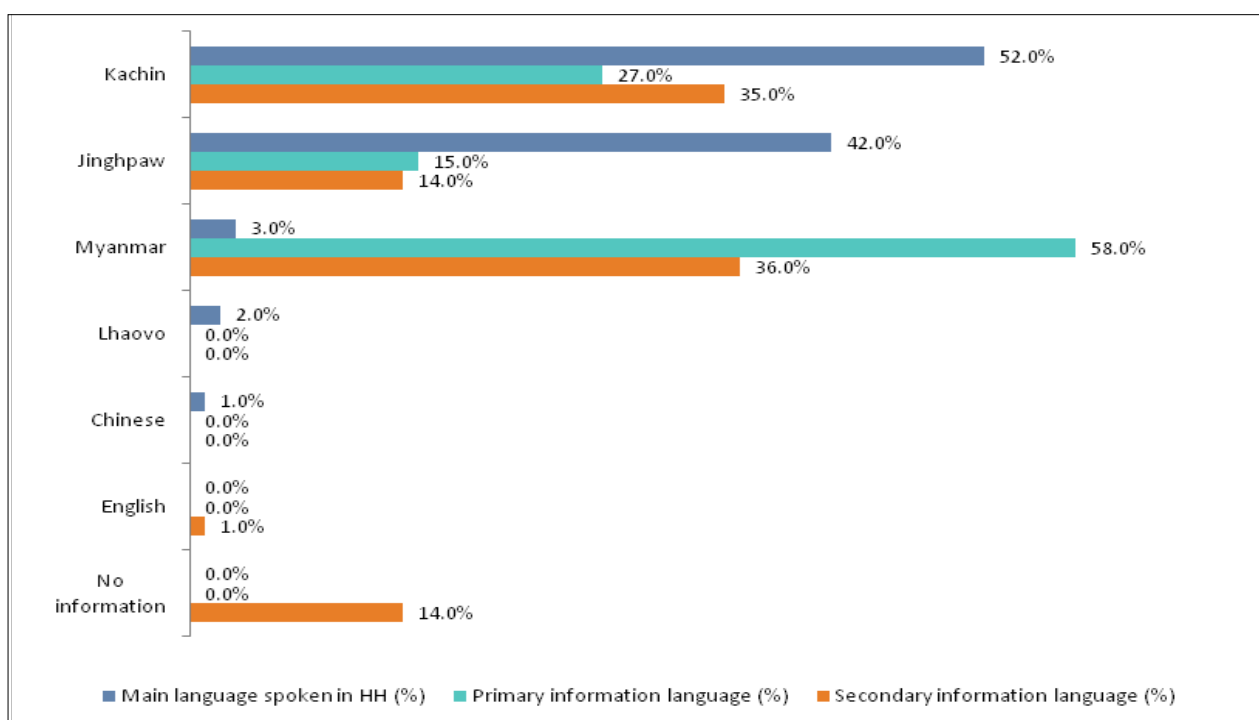


Figure 7.5(a) Social Trust 'A' by Sex (IDP Respondents)

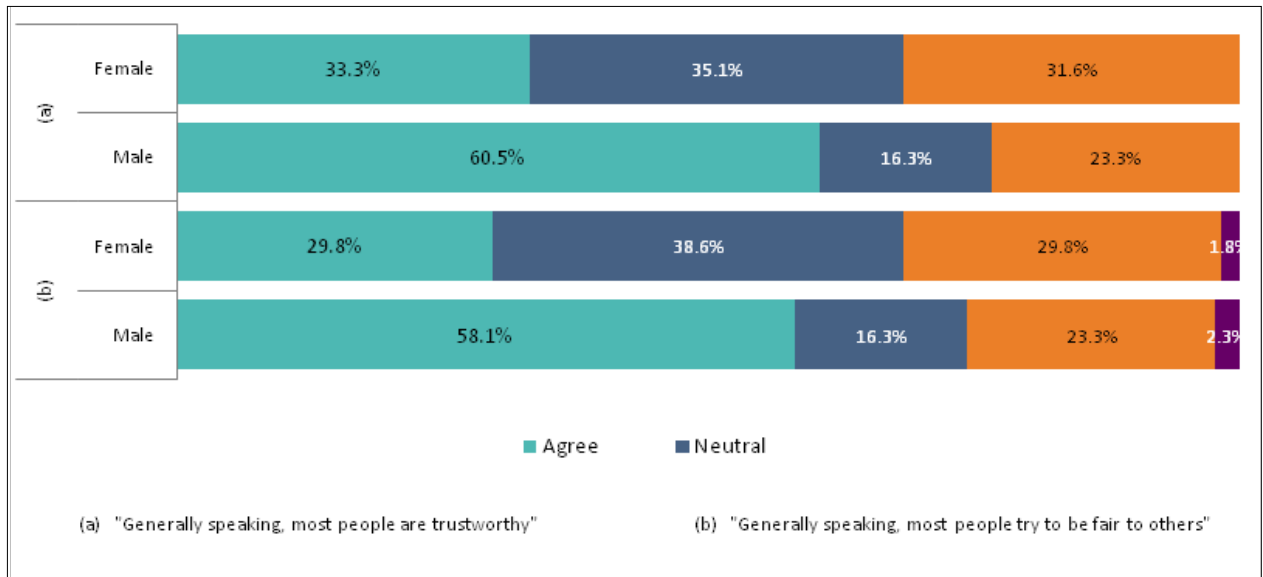


Figure 7.6(a) Social Trust 'B' by Sex (IDP Respondents)

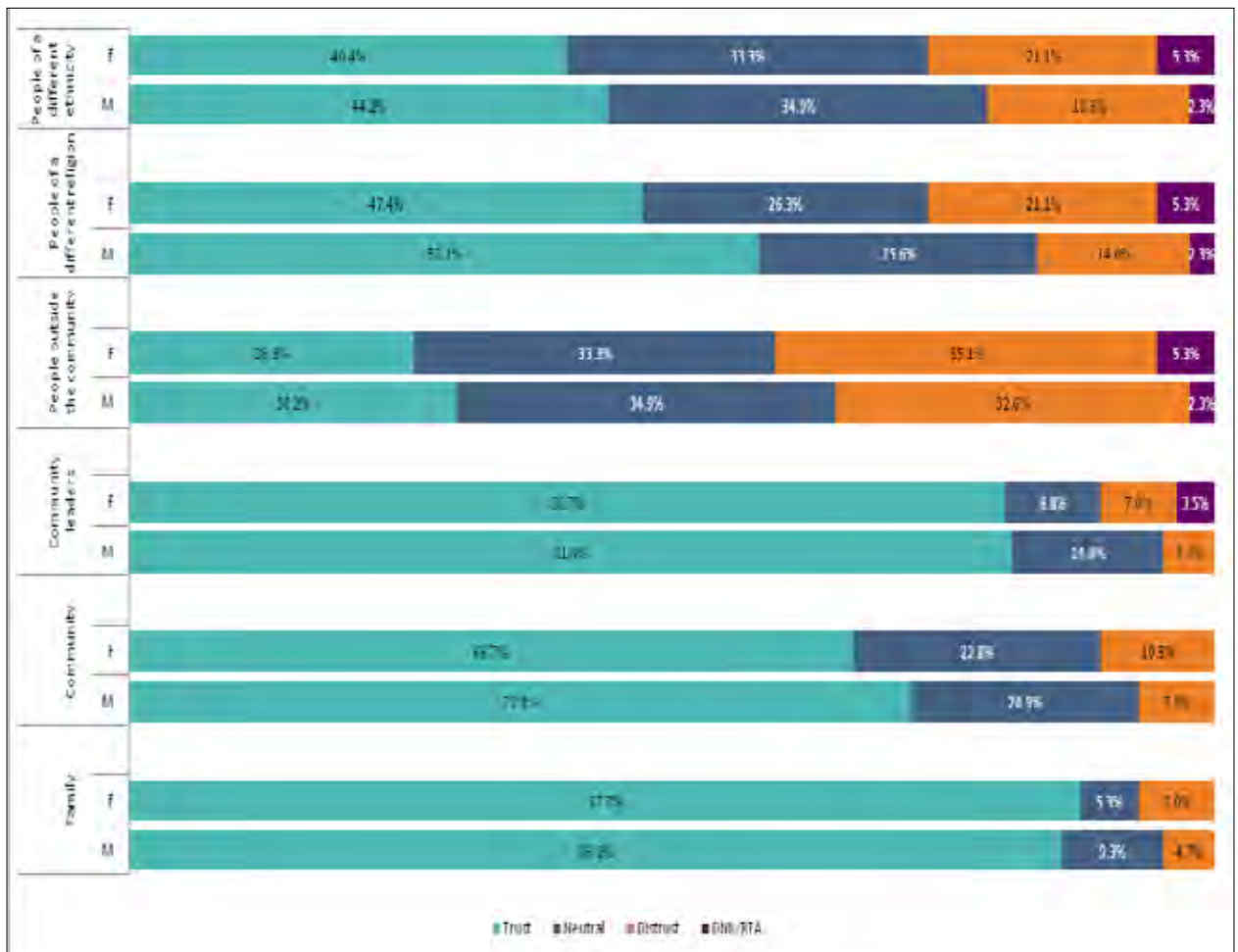


Table 7.3(a) Perceptions of Justice by Sex (IDP Respondents)

		M	F
FORMAL VS. INFORMAL	(a) Some disputes are best settled in the Courts.	37.2%	15.8%
	(b) It is better for most disputes to be settled within the community.	51.2%	71.9%
EQUALITY	(a) Every person deserves equal care and concern by the government regardless of religion or ethnicity.	88.4%	89.5%
	(b) The majority ethnic or religious population should receive more care and concern from the government than minority ethnic or religious groups.	11.6%	8.8%
FATE VS. REMEDY	(a) Injustices can befall people, and there is nothing they can do about it because it is their fate.	11.6%	8.8%
	(b) When injustices befall people, they can get help from others to obtain a remedy and to ensure a fair outcome.	88.4%	89.5%
PRIVATE VS. PUBLIC	(a) Matters within a family are private and internal to it, and a married man has complete authority over his spouse and children.	44.2%	33.3%
	(b) A community sometimes has the responsibility in certain circumstances to intervene in the household matters of others.	39.5%	47.4%
TRANSITIONAL JUSTICE	(a) Old problems that happened in the past should not be revisited, and everyone should focus on building a new Myanmar.	30.2%	17.5%
	(b) Old problems that happened in the past must be addressed, so that we can build a new Myanmar.	67.4%	75.4%
PROCESS VS. OUTCOME	(a) Being fairly treated throughout a process is more important than obtaining a favourable outcome.	81.4%	91.2%
	(b) Obtaining a favourable outcome is more important than being treated fairly during a process.	16.3%	8.8%
GENDER	(a) Men and women have equal value, but women have greater responsibility to care about culture and tradition.	4.7%	5.3%
	(b) Men and women have equal value, and both have equal responsibility to care about culture and tradition.	93.0%	93.0%
INDIVIDUAL VS. COMMUNITY	(a) Individual rights must be as respected as communal harmony.	74.4%	73.7%
	(b) Asserting individual rights is selfish, and maintaining communal harmony and agreement must be prioritised.	23.3%	17.5%

Figure 7.8(a) Words in Daily Conversation by Sex (IDP Respondents)

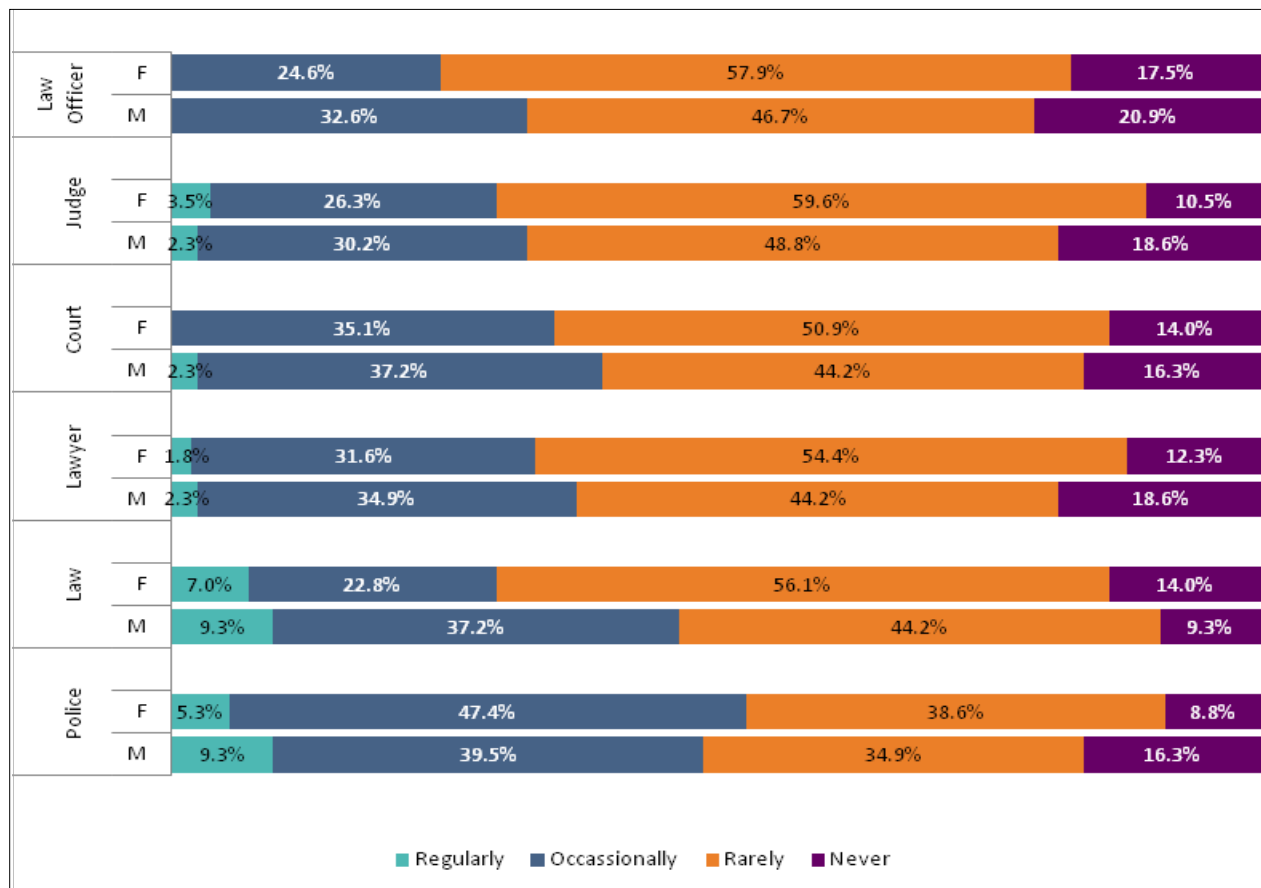


Figure 7.8(b) Words in Daily Conversation by Displacement Status

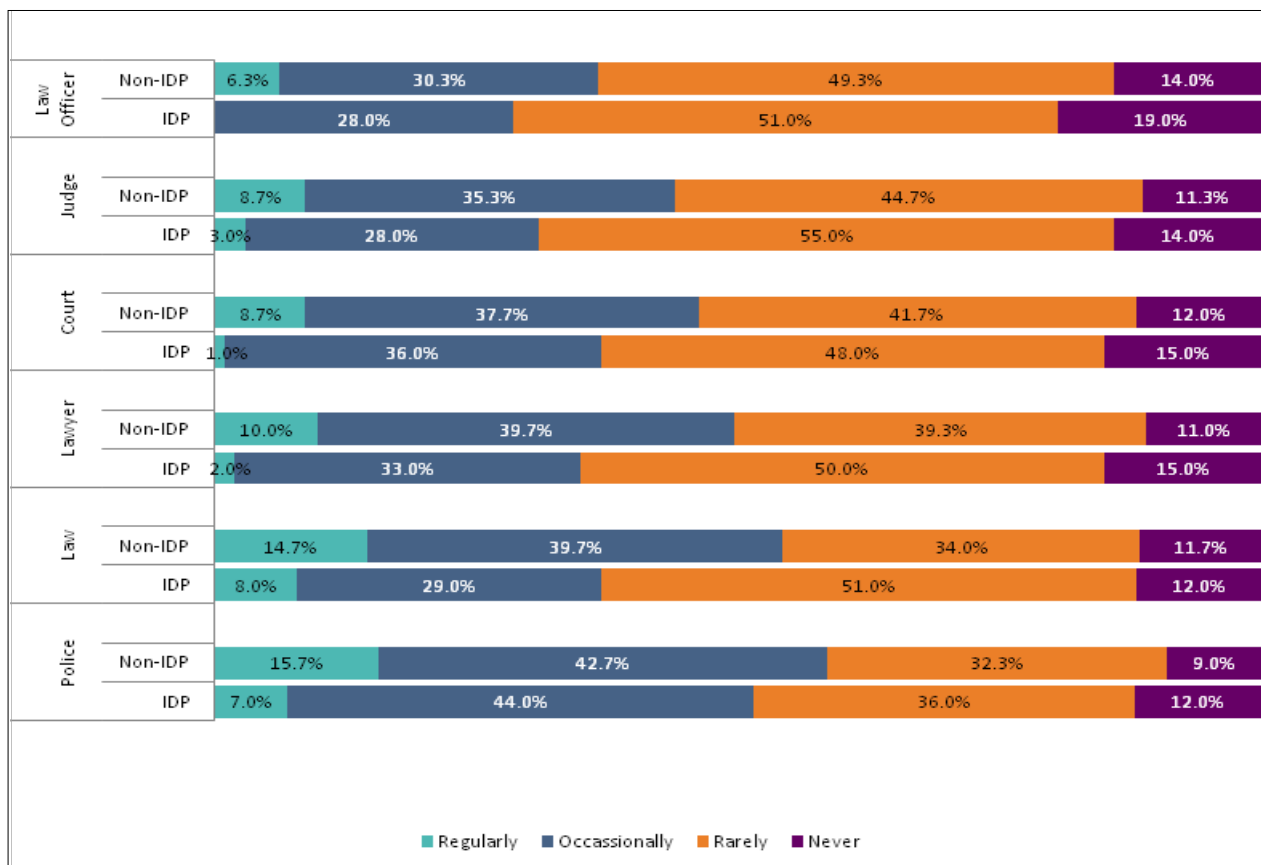


Figure 7.13(a) Dispute Settlement Preferences – Hypothetical 1 (IDP Respondents)

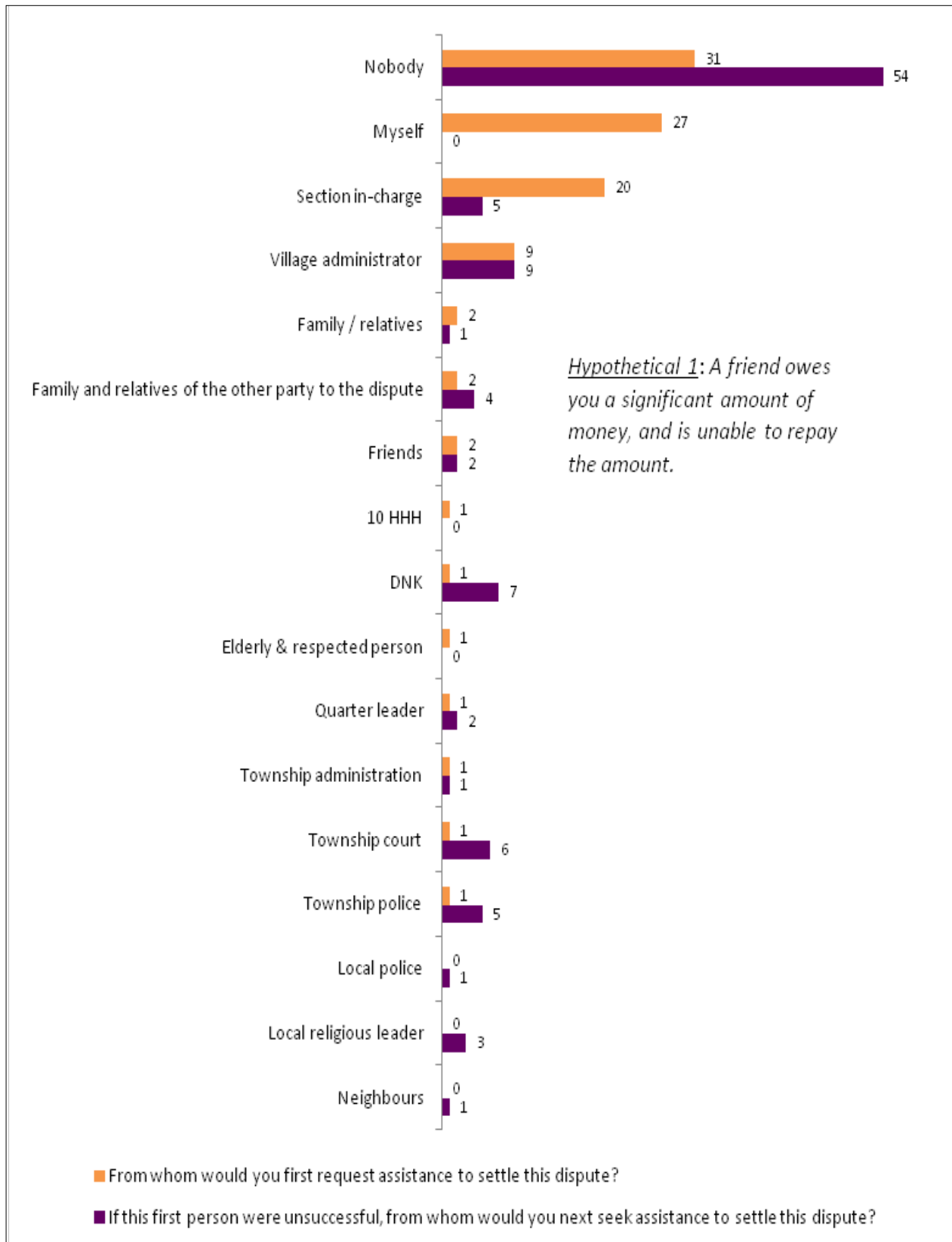


Figure 7.13(b) Dispute Settlement Preferences – Hypothetical 2 (IDP Respondents)

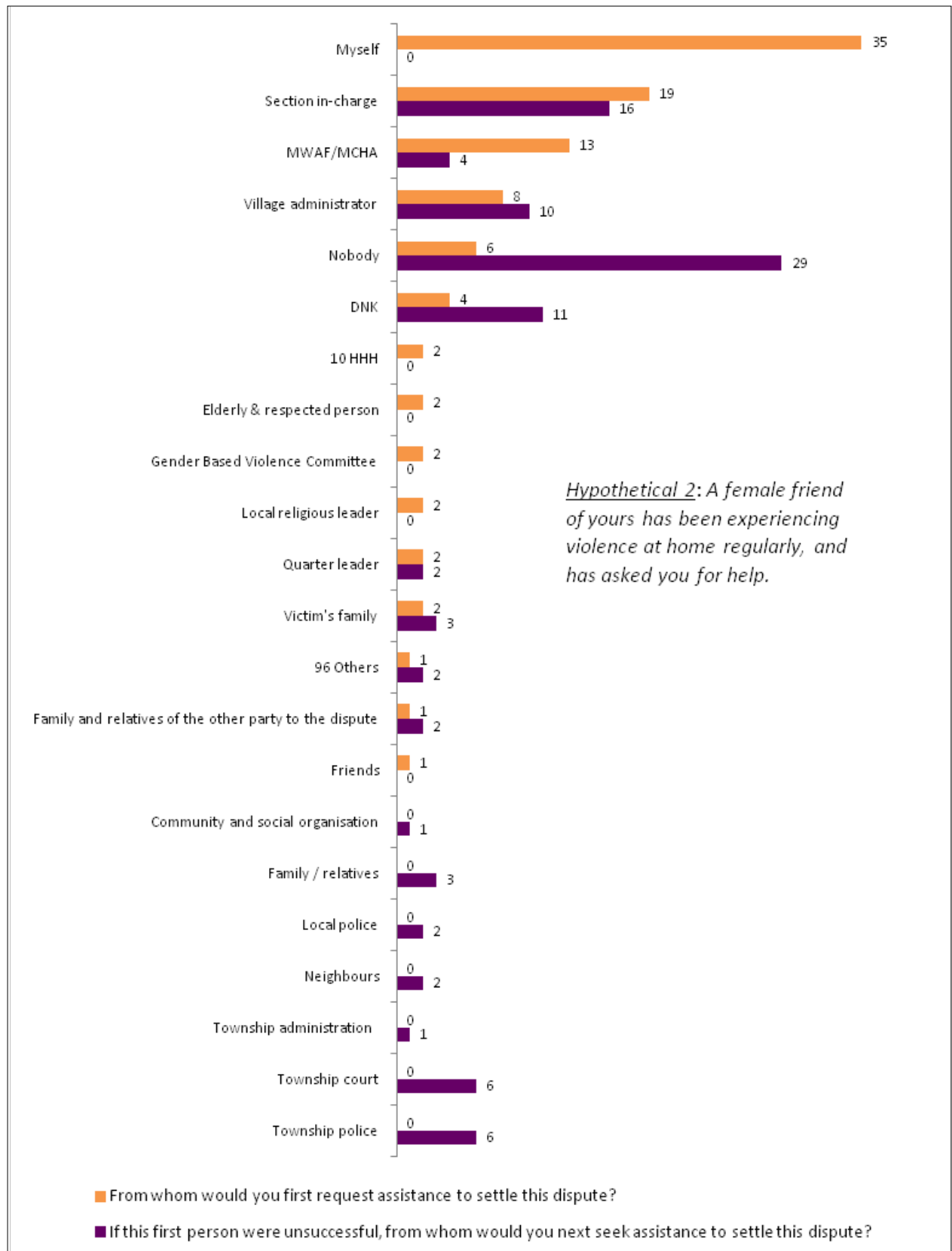


Figure 7.13(c) Dispute Settlement Preferences – Hypothetical 3 (IDP Respondents)

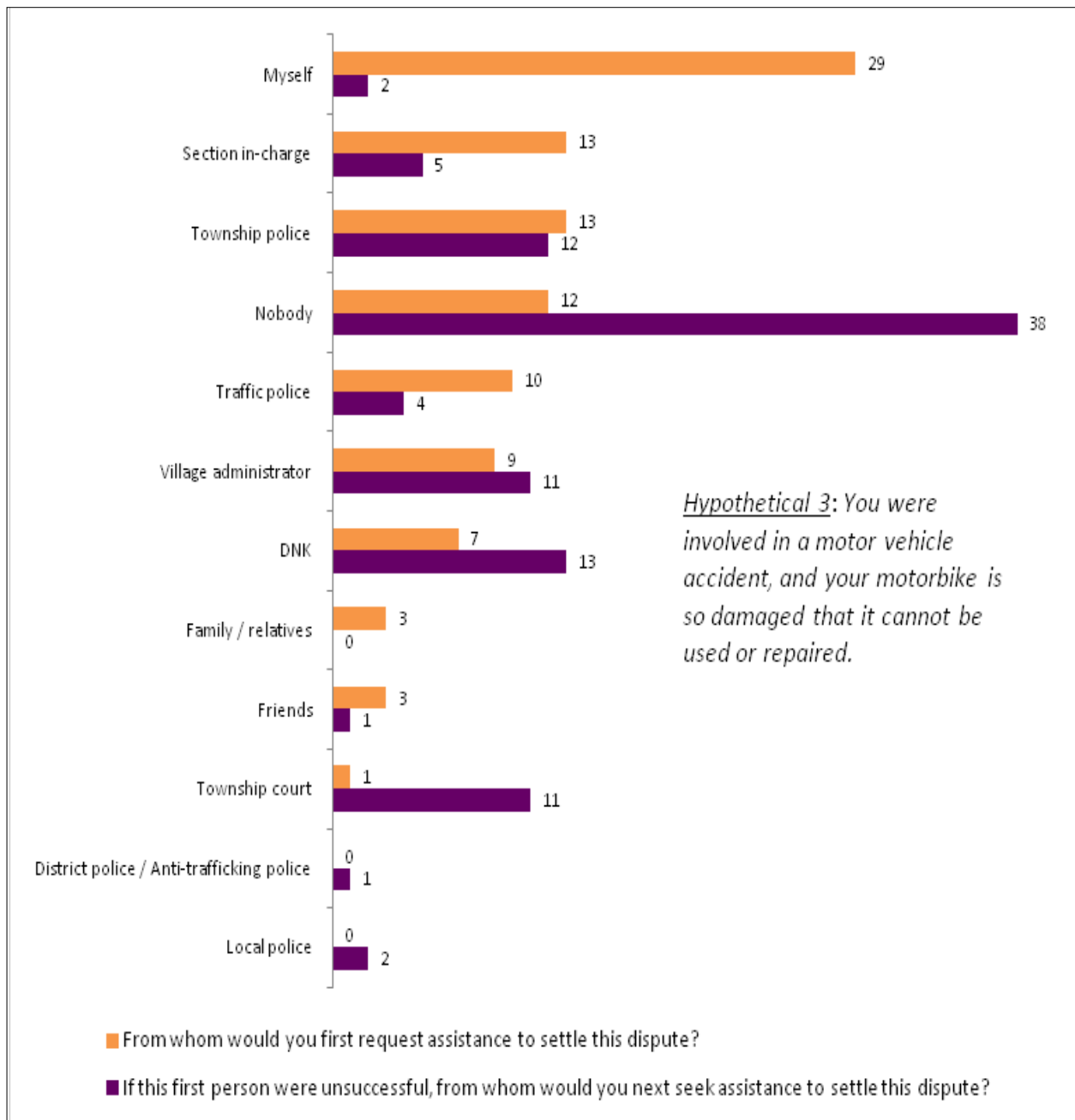
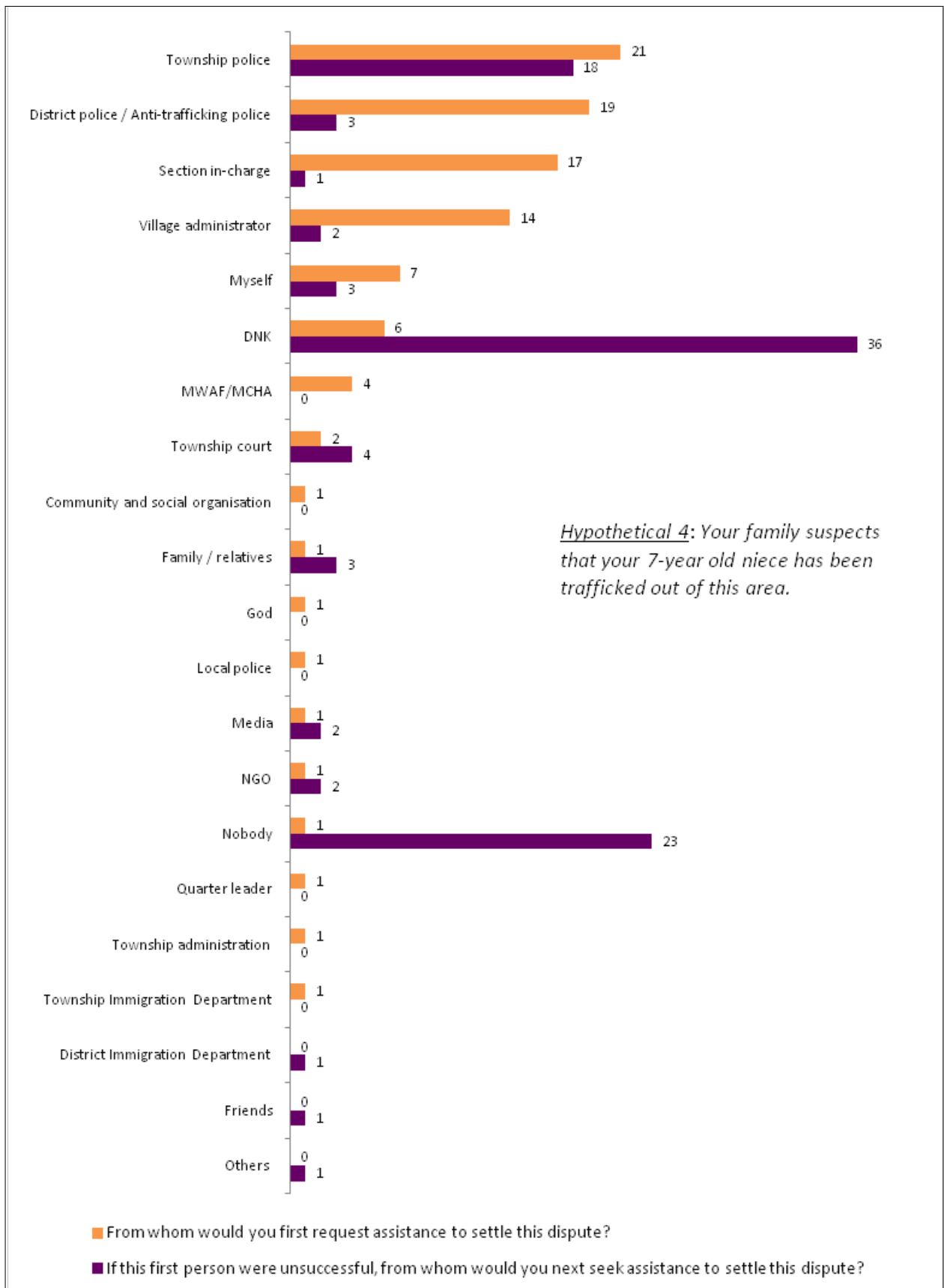




Figure 7.13(d) Dispute Settlement Preferences – Hypothetical 4 (IDP Respondents)










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