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Rule of Law Centres

THE RULE OF LAW CENTRES ISSUE BRIEF SERIES

BRIEF NO. 3:  
LEGAL AID SERVICE PROVIDERS AND THE COMMUNITIES THEY SERVE



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## THE RULE OF LAW CENTRES ISSUE BRIEF SERIES

The Rule of Law Centres Initiative (ROLCs), launched in 2014 by the United Nations Development Programme (UNDP) at the request of the Pyithu Hluttaw Rule of Law and Tranquility Committee and now guided by the Coordinating Body on Rule of Law Centre and Justice Affairs, helps increase trust and cooperation between justice providers and the communities they serve. UNDP and the International Development Law Organization (IDLO), under their global partnership agreement, have established four nationally operated Rule of Law Centres in Myanmar to provide communities with the knowledge, skills and values they need to address local justice issues through training, dialogue and access to resources. The initiative is made possible by the generous support of the governments of Australia, Finland, Japan, Sweden and the United Kingdom.

A key challenge for both government and non-governmental actors in Myanmar is the limited availability of an evidence base for policymaking and lawmaking and limited capacity to generate research and analysis. There is also limited public and practitioner understanding of the policymaking and lawmaking processes and how decisions are made within government, including identifying where advocacy by national and international actors may be most effective.

The Issue Brief Series seeks to help address this gap by drawing on the insights and local knowledge generated through the extensive programmatic work of the Rule of Law Centres in four locations across Myanmar, to provide concrete recommendations to government and non-governmental actors on priority justice issues. Through community forums and legal discussions, the Rule of Law Centres bring together communities, civil society, lawyers and local government officials to share knowledge, build dialogue and discuss solutions to local justice issues. Between August 2015 and December 2017, more than 7,000 participants<sup>1</sup> attended a total of 84 community forums and discussions across the four Centre locations, focused on justice issues of concern in the community. Civil society and government participants alike regularly comment on the value of this rare opportunity to come together to openly discuss community justice issues and identify solutions.

During the implementation of the ROLCs, a number of people sought legal advice or legal assistance from the Centres. Though the provision of such assistance fell outside the ROLCs' mandate, it highlighted the need to address the demand for service provision and connect justice seekers with those who could provide assistance. To this end, the ROLCs worked together with *Avocats Sans Frontières* (ASF) to conduct a mapping of legal aid service providers (LASPs) – including lawyers, paralegals, and civil society organizations (CSOs) – around Mandalay, Myitkyina, Taunggyi and Yangon with the aim of developing a Legal Referral System for justice seekers, and assessing the needs and perceptions of LASPs and justice seekers alike. In addition, the intention of the mapping was to contribute to a knowledge base about key priority needs, including assessing the extent to which legal aid initiatives match communities' expectations and needs, addressing negative perceptions of formal justice institutions and legal service providers, and developing targeted recommendations to address priority issues.

This Issue Brief outlines key findings regarding legal aid provision by service providers, and sets out the results of the mapping undertaken by ASF. The research set out in this Brief draws on the deep relationships the ROLCs enjoy with their host communities which engages both

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<sup>1</sup> Note this figure includes attendance at multiple events by a single individual.

government and non-government actors in programming, making the Centres an ideal platform to support communities to identify and implement grassroots level solutions identified in the Issue Briefs.

The ROLCs wish to thank all ROLC participants and key informants interviewed for this Brief for their active engagement and participation towards strengthening rule of law in Myanmar. In addition, the ROLCs wish to thank ASF, and in particular Bruno Langhendries and Julien Moriceau, for conducting the mapping and research which inform the findings and recommendations set out in this Brief.

## EXECUTIVE SUMMARY

Since the creation of the ROLCs, members of the public have attended the Centres seeking legal advice or assistance with respect to a variety of issues. These requests highlight ongoing access to justice issues for community members who cannot afford to pay for the legal services they require or, in some cases, do not know where to turn for assistance. At the same time, more than 2,000 lawyers and CSO representatives seeking to strengthen knowledge and skills on rule of law and legal practice in Myanmar completed ROLCs training courses.

The government of Myanmar has acknowledged the importance of access to justice through the introduction of the *Legal Aid Law* in 2016. While this is a significant step in the right direction, the law has not yet been fully implemented. As a result, at present, government-funded legal aid is only available in cases punishable by the death penalty. This is particularly troubling given the widespread lack of legal awareness among the general population.

In an effort to develop a Legal Referral System to link marginalized justice seekers with legal service providers in their communities, and contribute to the knowledge base concerning access to justice issues facing communities and service providers, ASF conducted a mapping of legal aid service providers (LASPs) in and around Mandalay, Myitkyina, Taunggyi and Yangon in March and December 2016 (the Survey). The Survey resulted in the identification of approximately 50 LASPs – including lawyers, paralegals and CSOs – and the development of guidelines for a Legal Referral System in the ROLCs, to connect justice seekers to LASPs in the regions they operate.

The findings highlight that LASP activities are growing in Myanmar, in particular since the democratic transition began in 2011. However, LASPs tend to be disparate and fluidly defined, and operate in an ad hoc manner. The Survey found that LASPs generally fall into two main categories: (i) CSOs and (ii) law firms or sole practitioners, but they defy further categorization. The LASPs surveyed have divergent organizational structures, mandates and approaches, and face different challenges in providing legal assistance to their communities. In addition, most providers lacked a fair, objective and transparent framework of eligibility criteria for selecting clients.

LASPs reported that the key obstacles to their work included corruption in the justice system and a lack of legal awareness by the general public, which compounded the impact of disputes and legal issues in a number of ways. By contrast, justice seekers identified a lack of legal awareness, distrust in justice institutions and an apprehension of lawyers as amongst the most pressing barriers to justice in Myanmar.

Community members and LASPs alike reported an overwhelming preference for alternative dispute resolution (ADR) mechanisms where possible, though the particular mechanisms employed diverged depending on the parties involved, the location, and the type of dispute.

Broad recommendations drawn from the issues raised and solutions put forward by community leaders, CSOs, and LASPs interviewed during the Survey are set out in the Recommendations section of this Brief. They fall within the following overall areas:

## SUMMARY OF RECOMMENDATIONS

### UNION, STATE AND REGIONAL GOVERNMENTS

- Fully implement the *Legal Aid Law* (2016).
- Establish Legal Aid Bodies at the state and regional levels, with the support and guidance of the international community to ensure best practices, and ensure appropriate funding to the relevant bodies.<sup>2</sup>
- Continue to participate in ROLC forums and discussions to identify solutions to community justice issues and foster trust in formal justice mechanisms by community members.

### CIVIL SOCIETY ORGANIZATIONS

- Partner with international non-governmental organizations (INGOs) and donor governments to increase organizational capacity and improve the delivery of legal aid services for vulnerable community members in a manner that is fair, transparent and consistent with rule of law principles.
- Through programming and community engagement, target harmful cultural norms, practices and perceptions that impede access to justice for vulnerable community members.
- Continue to provide access to legal information and pro bono legal assistance.

### DEVELOPMENT PARTNERS

- Support local and national governments in collecting baseline data on community justice issues and preferences for dispute resolution to inform service provision of legal aid in high need areas.
- Support CSOs through grants, capacity building and provision of technical advice to enable and improve the delivery of services by LASPs.
- Support the implementation of the *Legal Aid Law* (2016), including the establishment of Legal Aid Bodies throughout the country.
- Support capacity development of justice actors, including judicial officers, law officers and police, and informal actors, including community and religious leaders.
- Support research initiatives to continue to grow the evidence base on key justice issues.

### RULE OF LAW CENTRES

- Continue to work towards building a functioning, comprehensive and accessible referral system for justice seekers.
- Continue to provide specialized capacity development support and training to LASPs, including lawyers, paralegals and CSOs, to help ensure that legal aid is provided in a just and ethical manner consistent with rule of law principles.
- Increase the reach of ROLC activities, through expanded programming to maximize community exposure, as well as more trainings on key local issues to increase legal awareness and build trust between LASPs and the justice seekers they serve.

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<sup>2</sup> Note the Union Legal Aid Board was formed in November 2017 and came into operation in May 2018.

- Continue to provide a forum for discussion and coordination between the government, informal justice actors, CSOs and local lawyers to address key justice issues and take action on proposed solutions.
- Continue to support the capacity development of critical stakeholders through specialized legal training, including: National, State/Regional and Local government, informal justice actors, CSOs and local lawyers.

## INTRODUCTION

Since the establishment of the ROLCs in 2014 in Yangon, Mandalay, Taunggyi and Myitkyina, the Centres have provided specialized legal training and pursued community outreach and dialogue initiatives to increase trust and cooperation between justice providers and the communities they serve. While the ROLCs do not provide direct legal assistance to the community, members of the public have on occasion attended the Centres seeking legal assistance, assuming that direct legal services were available in light of the ROLCs' reputation as a hub for rule of law and justice sector activities.

While legal assistance services fall outside the scope of the ROLCs' mandate, the need for affordable legal services in communities across Myanmar is clear, as is the corresponding need to bridge the divide between justice seekers and suitable LASPs in their communities.

The ROLCs commissioned ASF to conduct a mapping of LASPs in and around Mandalay, Myitkyina, Taunggyi and Yangon (the Survey).<sup>3</sup> The Survey was undertaken in March, May and December 2016 in an effort to provide appropriate and sustainable ways of addressing justice needs across Myanmar. In addition, in the absence of a formal and operational legal aid system, the Survey was intended to provide insight into how legal aid initiatives – meaning legal advice, assistance, information and/or representation offered at little or no cost to the persons receiving it<sup>4</sup> – were being carried out.

The purpose of the Survey was twofold: first, to develop a Legal Referral System to link justice seekers who cannot afford to pay for legal services to legal practitioners in their communities offering legal aid or pro bono services; and second, to better understand the perceptions and practices of LASPs and justice seekers, to enable an analysis of (i) the effectiveness and efficiency of the initiatives implemented; and (ii) individuals' levels of trust in the services available to them.

### Methodology

Findings and recommendations included in this brief were informed by the Survey which included participation of 55 lawyers, paralegals and representatives of CSOs identified as providers of legal services free of charge or at reduced fees (collectively referred to as LASPs<sup>5</sup>). The data collected was focused mainly on the scope of their interventions, the services they offered, the legal issues they faced, and the extent to which they were guided by formalized selection criteria or policies.

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<sup>3</sup> See Denney, L., Bennett, W., & San, K.T., *Making Big Cases Small and Small Cases Disappear: Experiences of local Justice in Myanmar*, MyJustice (Yangon 2016), where the authors note the importance of “investing in understanding the complex and varied ways in which people already think about and resolve disputes and injustices. Access to justice tools may be able to work with, expand or improve these existing processes, but this needs to be carefully considered and set out in any programme assumptions and theories of change” (at 47).

<sup>4</sup> See definition provided in UNDP, UNODC ‘Global Study on Legal Aid’, Global Report (2016) at 8: [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global\\_Study\\_on\\_Legal\\_Aid\\_-\\_FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf)

<sup>5</sup> The Survey identified lawyers, paralegals, and CSOs as the most common providers of legal aid services. Although they have different mandates and functions, for ease of reference, “LASPs” has been used throughout this Brief to refer to these actors collectively, though distinctions have been made where appropriate.



A multifaceted approach was employed. Key informant interviews and a number of focus groups were conducted. Fifty-five individual, semi-structured interviews were conducted with lawyers providing legal aid (28) and with CSOs and community leaders<sup>6</sup> (27). In addition, 5 focus groups were held with paralegals (2), CSO members (2) and justice seekers (1).<sup>7</sup> Fifty-five participants attended the focus groups, of which 4 were also interviewed as key informants.

Further, questionnaires were provided to LASPs to facilitate the creation of a Legal Referral System, and to gauge participants' perceptions of legal aid, the justice system and significant barriers to access to justice.<sup>8</sup>

## BACKGROUND

Access to justice is a fundamental principle of the rule of law and a human right in and of itself. It underpins, and is integral to, the protection and promotion of all other rights.<sup>9</sup> Ensuring access to justice, particularly for those most vulnerable and least able to afford it, is therefore essential in order to achieve equality before and under the law.

Currently, there are a number of barriers to access to justice in Myanmar. Roughly 1,000 judges handle 300,000 cases each year, and more than half of the outdated, colonial era laws now in force were enacted prior to independence in 1948.<sup>10</sup> While there are approximately 9,000 licensed advocates and 40,000 licensed higher grade pleaders (HGP) in Myanmar, most are not in active practice: only 2,000 licensed advocates and 15,000 HGPs indicate current active practice according to a 2014 study by UNDP.<sup>11</sup> Research suggests that people regard the legal system as daunting, and there is a widespread belief that bribing officials is the only way to resolve a case (criminal or civil), regardless of guilt or innocence.<sup>12</sup> Many people prefer to resolve disputes informally and to avoid interacting with the police and court system where possible.<sup>13</sup> This preference may stem from a familiarity with informal customary dispute resolution mechanisms, low public legal awareness, or perceived or real barriers to access such as delay, cost, linguistic differences or distance from institutions. These issues are consistent themes at ROLC community forums and discussion groups, as explored in greater detail in the ROLC Issue Brief Series.<sup>14</sup>

The government of Myanmar acknowledged the importance of access to justice through the introduction in 2016 of the *Legal Aid Law*. This reflects a significant recognition of the purpose

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<sup>6</sup> As used in the Survey and in the Myanmar context, the term 'community leaders' does not have a restrictive meaning but is understood to mean individuals "who represent the community externally, in particular to solve conflicts".

<sup>7</sup> Semi-structured interviews with community leaders and justice seekers took place in March and December 2016 in Myitkyina (8), Taunggyi (6), Hpa-An (4), Yangon (2), and Mandalay (7), and with LASPs in Kachin State (2), Shan State (9), Yangon (12) and Mandalay (5) in March, May and December 2016. Five focus groups took place (1 in each of Kachin, Shan and Kayin States, and 2 in Yangon).

<sup>8</sup> Forty-nine completed questionnaires were received from respondents.

<sup>9</sup> Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, UNGA, 67<sup>th</sup> Sess, UN Doc A/67/278 (9 August 2012), 20, [91].

<sup>10</sup> UNDP, *Rule of Law and Access to Justice in Myanmar* (2013-2015).

<sup>11</sup> *Ibid.*

<sup>12</sup> UN Women and Justice Base, *Voices from the Intersection: Women's Access to Justice in the Plural Legal System of Myanmar* (2016).

<sup>13</sup> Denney et al., *supra*; Helene Maria Kyed, *Justice Provision in Myanmar*, DIIS Policy Brief (March 2017).

<sup>14</sup> The Rule of Law Centres Issue Brief Series is available at: <https://www.rolcmyanmar.org/en/resources>. See also: Harper, E., *Customary Justice: From Program Design to Impact Evaluation*, IDLO (2011).

of – and need for – legal aid in Myanmar, and is undoubtedly an important step towards compliance with the Constitution and international law.

However, more work needs to be done. While the law was introduced in 2016, it is still in the early stages of implementation. Currently, government legal aid is only available in cases that include capital punishment as a potential penalty. In addition, the law’s focus on criminal cases alone leaves a large proportion of the population without assistance in enforcing a number of fundamental rights. The law contemplates an extensive (and costly) bureaucratic process through the establishment of Legal Aid Bodies, which will be responsible for designating legal practitioners that apply to be “legal aid providers”.

Perhaps most critically, the law takes a restrictive approach to who can provide “legal aid” and in what circumstances. For instance, while the law only applies to formal justice institutions, such as courts and administrative tribunals, research shows the public’s overwhelming preference for informal dispute resolution channels. Furthermore, the *Legal Aid Law* provides that only a lawyer, a person who is studying law at a government-recognized university, or a person who does not hold a law degree but has judicial, legal service or departmental office experience may apply to be a “legal aid provider”. Whether this latter category will be interpreted narrowly remains unknown, but such a restricted approach does not adequately reflect the lived reality for many individuals across Myanmar, for whom paralegals and non-legal CSOs are often important providers of legal assistance. In addition, it does not reflect the complex dynamics in Myanmar or the broader initiatives that exist for the benefit of marginalized populations.

At present, in the absence of a systematic, national legal aid program, individuals in need of legal assistance are reliant on ad hoc legal aid services in Myanmar, which are provided primarily in two ways. First, many legal practitioners in Myanmar have traditionally provided services free-of-charge or at reduced fees on a *pro bono* basis, usually at their own cost, as part of their overall work. Second, foreign donors fund legal aid services offered by dedicated legal aid offices<sup>15</sup> or as part of broader mandates aimed at law reform and social development.<sup>16</sup>

## FINDINGS

The Survey identified 55 LASPs providing services in Mandalay, Taunggyi, Myitkyina and Yangon. In an effort to create a Legal Referral System and contribute to a knowledge base, the Survey also undertook to explore the following issues:

- (i) identifying the types of LASPs operating in the 4 regions and the kinds of services they provide;
- (ii) highlighting key obstacles to the provision of legal services from the perspectives of both LASPs and justice seekers; and
- (iii) exploring the preferences of both LASPs and justice seekers regarding formal or informal justice mechanisms.

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<sup>15</sup> See, for instance, the Justice Centres funded by MyJustice and Legal Clinic Myanmar, a national organization funded by UNDP and others.

<sup>16</sup> See, for example, the Integrated Development Executive Association (IDEA) – funded by Promoting the Rule of Law Project – which also works on rural development, social cohesion and human rights.

## PROFILE OF SURVEYED LEGAL AID SERVICE PROVIDERS

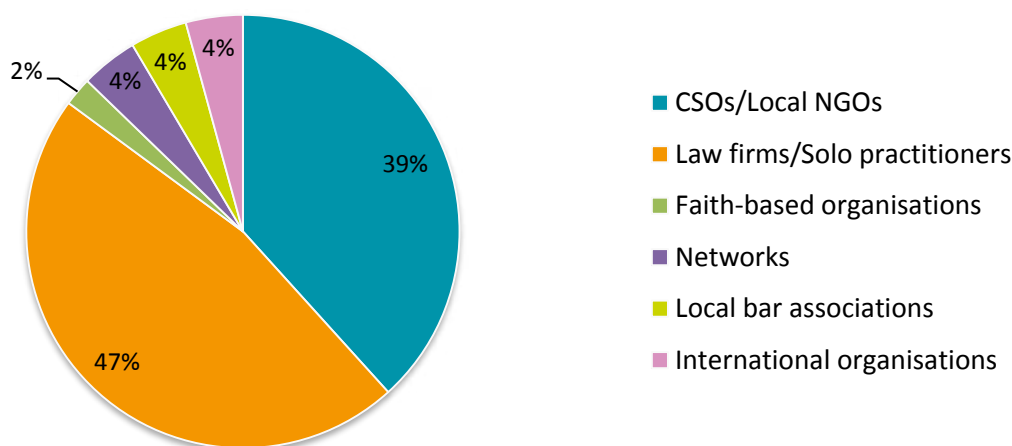
Much of the information gathered to identify LASPs was quantitative data from verbal interviews. The data provides a snapshot of the LASPs surveyed, and forms the basis of the issues discussed in this report.

It is important to note that the data outlined below was accurate as at the date it was collected.<sup>17</sup> The figures are likely to evolve over time due to shifting priorities, needs, and funding sources.

As described in further detail below, the Survey highlighted the largely unstructured approach to the provision of legal aid services in Myanmar by lawyers and CSOs alike. LASPs often provide services in an ad hoc manner, as and when opportunities (and, in the case of CSOs, funding) arise.

### Types of Legal Aid Service Providers

The vast majority of LASPs identified in the Survey were law firms, sole practitioners, and CSOs. In addition, 2 bar associations provided free legal services, although one did so only for capital punishment cases. Several legal aid networks, such as M-Law, Myanmar Media Lawyer Network, and Rule of Law Network, were also identified.



**Figure 1** Types of Legal Aid Service Providers

Beyond the provision of free legal services, however, key differences were observed in LASPs' purposes, objectives and strategies, staffing structures, and financial resources.

The differing purposes, objectives and strategies of LASPs were due in large part to varying mandates. For example, some CSOs focused on particular issues or disadvantaged groups, such as land or LGBTI issues. In some instances, the provision of legal aid services to such groups was consistent with the CSO's broader mandate. By contrast, some law firms and legal practitioners took a broader approach to legal aid services, given the absence of a particular mandate.

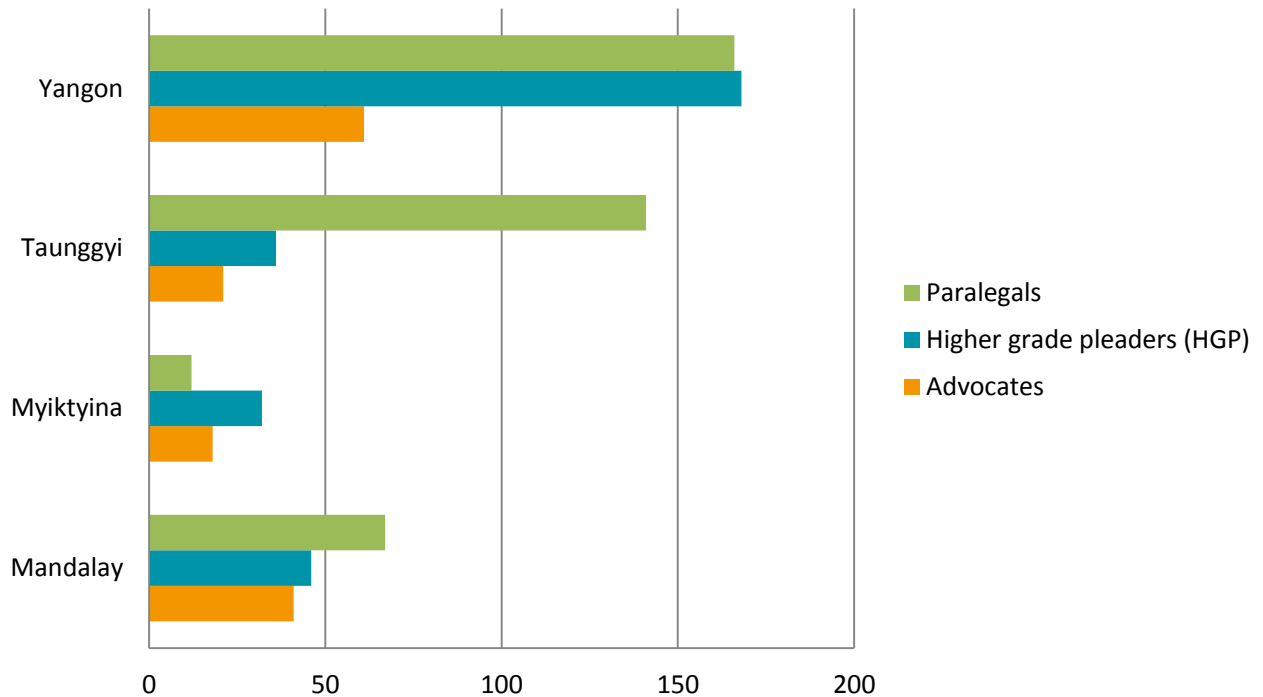
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<sup>17</sup> March, May and December 2016.

LASP staffing structures also varied significantly. The Survey included 3 personnel classifications: advocates, higher-grade pleaders,<sup>18</sup> and paralegals.<sup>19</sup> An overview of the actors involved confirmed that a significant number of paralegals (386) support legal aid initiatives.<sup>20</sup> Higher-grade pleaders (282) and advocates (141) were the next most commonly identified providers.<sup>21</sup> A few organizations also had volunteers who supported their work.

Most CSOs were primarily comprised of paralegals, though a few had advocates and/or higher-grade pleaders on staff.

**Figure 2**      **Categorization by Role of Legal Aid Service Providers**



Many of the LASPs identified came into existence relatively recently. More than 75% were established after 2010.

The increase in the number of actors providing free or reduced-fee legal services may be due, in part, to the opening up of Myanmar to embrace democratic transition in 2011, as well as the changing political and economic climate of the country. In combination with a growing focus on, and understanding of, legal aid in recent years through the work of rule of law and justice initiatives, including the ROLCs, the introduction of the *Legal Aid Law* (2016), and the expanding involvement of the international community in Myanmar, it is perhaps not surprising

<sup>18</sup> The classifications of “advocates” and “higher-grade pleaders” date back to colonial times. An advocate has full rights of audience in all courts, while a higher-grade pleader can only speak to cases in district or township courts.

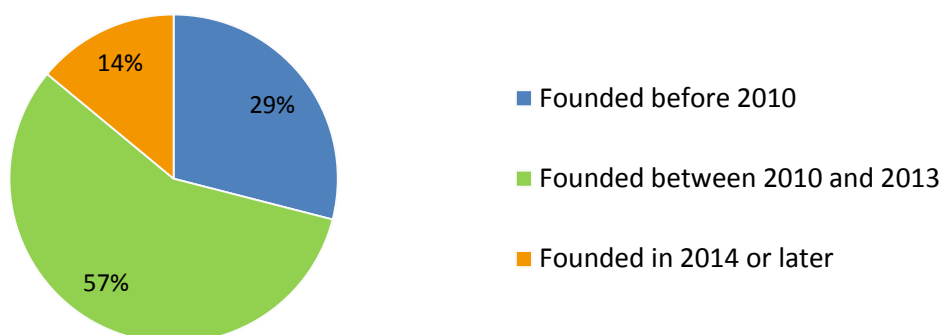
<sup>19</sup> It should be noted that the term ‘paralegal’ is very broadly and loosely applied in Myanmar and can often be understood to mean any person who has attended a legal training. Many ‘paralegals’ in Myanmar have not received specialized paralegal training, and case management and tracking is often limited.

<sup>20</sup> Note this figure was inflated by some of the larger organizations, such as Namati, which employ a significant number of paralegals, and therefore may not be representative. Administrative and financial staff were not included, though many LASPs had the assistance of support staff.

<sup>21</sup> Bar association practitioners were excluded so as not to inflate the count, as the data provided included all legal practitioners in their respective catchment areas, instead of only those providing free legal services.

that the number of LASPs has continued to grow.

**Figure 3**      **Years in Existence**



As the number of LASPs increases, the ROLCs and development community will need to provide guidance and support to local actors to connect LASPs to justice seekers who require assistance. Such initiatives should also ensure that vulnerable and marginalized communities receive assistance in a fair, transparent manner, in accordance with rule of law principles.

#### Types of Legal Services Provided

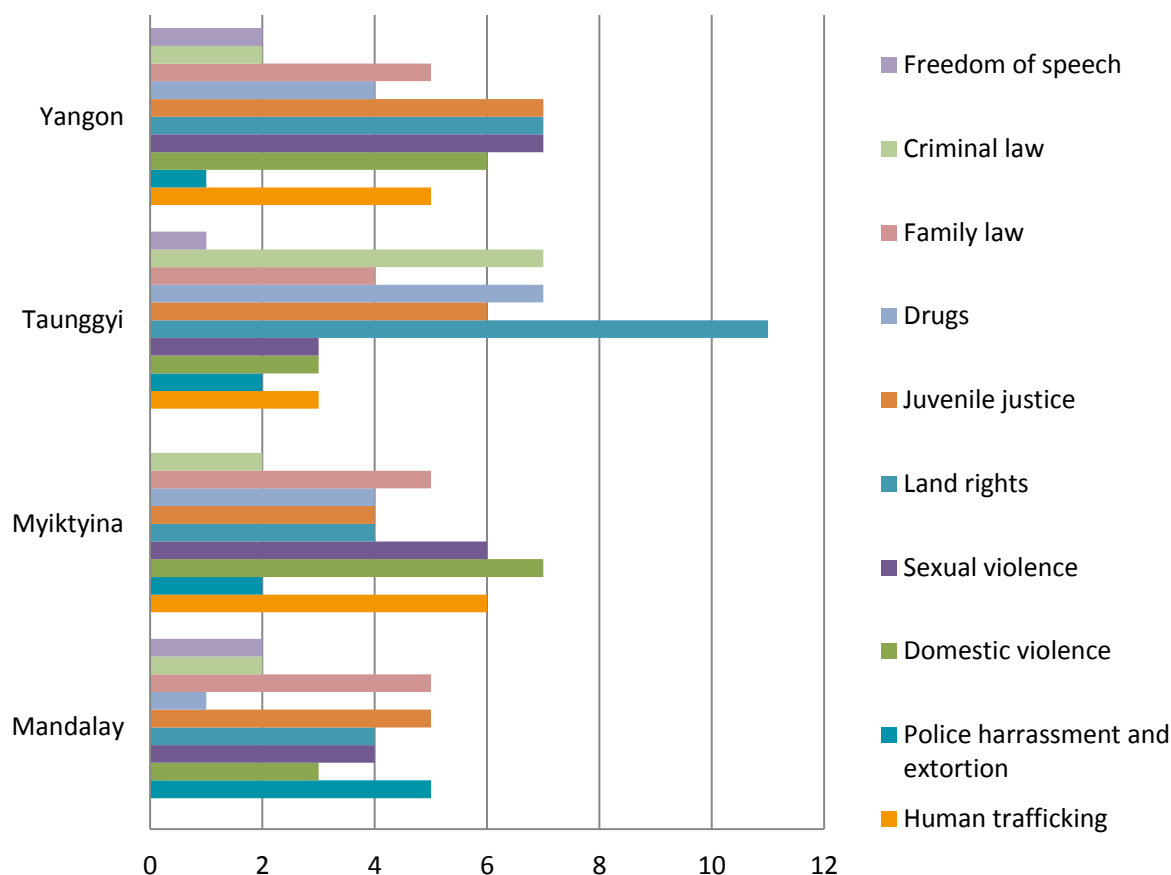
The types of cases handled by LASPs proved difficult to quantify. Interviewees were presented with a selection of issues from which to choose, and afforded the opportunity to add others to the list.

A number of legal issues were identified frequently across all regions, ranging from human trafficking and police harassment to land rights, freedom of speech and sexual and gender-based violence (SGBV). These findings mirror the key justice issues identified by communities through the ROLCs' outreach programming, as discussed in the Issue Brief Series.<sup>22</sup> Many of these community justice issues – including land claims, SGBV and child protection – are national in scope, while others are more pronounced in certain rural or urban areas.

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<sup>22</sup> The Rule of Law Issue Brief Series is available at: <https://www.rolcmyanmar.org/en/resources>.

**Figure 4 Types of Legal Issues Addressed**



Interviewees from all states and regions handled freedom of speech and cases of a political nature. All other legal issues were handled by at least one provider in each region in 2015.

The most common types of cases varied significantly from one region to another. For example, LASPs in Mandalay reported police harassment as the most frequent issue they dealt with, while in Kachin State it was domestic violence. In Shan State, land rights cases were the most common, while LASPs in Yangon dealt most commonly with criminal law matters.<sup>23</sup>

#### Types of Assistance Afforded

The Survey also explored the types of legal assistance provided. The categories proposed sought to broadly capture the activities of the providers, such as individual and group consultations, litigation services, non-litigious legal services and mediation. To ensure that all activities were captured, training was also included as an available selection.

The Survey found that the types of issues handled by LASPs varied significantly based on their profile and expertise. Lawyers were more likely to be involved in criminal cases, especially before the courts. While some lawyers occasionally handled civil and public law cases, particularly concerning family and land law, CSOs providing non-litigious assistance were more likely to handle such disputes.

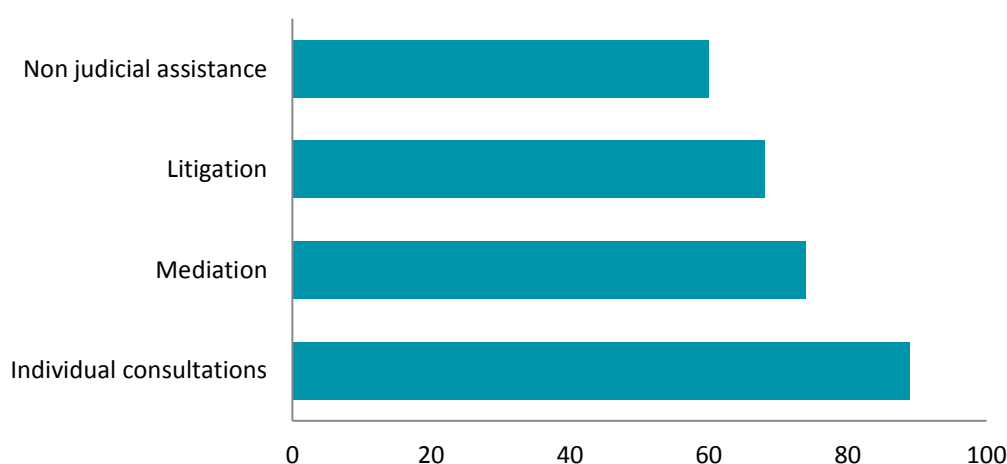
<sup>23</sup> This may not be an accurate representation of the legal issues facing the general population in these regions, as providers' respective mandates, commitments, and internal policies influenced the types of clients and issues they took on.

The Survey highlighted that while CSOs often have similar goals, their approaches may be different. The number and scope of the services offered often depend on international or local funding, especially for those CSOs that are recipients of funds. It also means that the scope of their activities may change over time, depending on the funding they receive.

Apart from these structured organisations, some sole practitioners and law firms are also involved in providing legal services to the poor. During semi-structured interviews, many participants confirmed that a significant majority of lawyers regularly give legal assistance voluntarily or at reduced rates. According to many of those interviewed, this is due to the socio-cultural context in Myanmar, which leads people to provide reciprocal assistance at a local level.

The survey found that 89% of the LASPs surveyed provided legal advice through individual consultations with clients.

**Figure 5**      **Types of Services Offered**



Non-judicial assistance included advocacy with the authorities, case follow-up and cooperation with other legal providers. Litigation services were found to be significant (68%), though they were not frequently offered by CSOs or local NGOs, which in most cases promoted the use of ADR<sup>24</sup>. In the event alternative mechanisms were unsuccessful, the Survey revealed that CSOs and NGOs were often connected to law firms which could assist in legal proceedings where necessary. It was further observed that where an organization had lawyers on staff, it generally provided litigation assistance itself. However, CSOs and NGOs with paralegals but no lawyers on staff would refer cases to lawyers with whom they had already developed formal or informal networks.

Although litigation assistance was widely offered, it had not reduced the practice of seeking alternative solutions to legal problems outside the formal system.<sup>25</sup> Recourse to alternative

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<sup>24</sup> ADR is generally understood to include a range of methods such as mediation, arbitration and negotiation. Although there are many different types of ADR used by justice seekers in Myanmar, depending on the type of issues, the people involved in the conflict, and the geographical area, mediation is likely the most common.

<sup>25</sup> This is consistent with findings in other studies. See MyJustice, *Searching for Justice in the Law* (Policy Brief, March 2018); UNDP, *Consolidated Summary Report: Access to Justice and Informal Justice Systems in Kachin, Rakhine, and Shan States* (UNDP 2017); Denney et al., *supra*; Myanmar Legal Aid Network (MLAW), *Between Fear and Hope: Challenges and Opportunities for Strengthening Rule of Law & Access to Justice in Myanmar*

methods of dispute resolution was widespread, particularly through mediation, as discussed in greater detail below.<sup>26</sup>

The availability of financial resources influenced organizational objectives and approaches, as well as the number of individuals LASPs could assist. Some LASPs also indicated that the types of support they could provide were limited by the availability of funds. For example, some interviewees reported that in addition to providing legal services, client supports included the provision of court fees, travel costs and social care such as food and accommodation. This was most common amongst organizations with broader social mandates. In addition, for some of the less structured and local organizations, it was not unusual for staff and/or volunteers to directly contribute to beneficiaries' legal costs.

### Policies and Practices Concerning Eligibility Criteria

All interviewees expressed that they had chosen to support people in positions of social or economic vulnerability, but many lacked clear operational guidelines to determine eligibility for free or low-cost legal services.

In the case of lawyers, the Survey revealed that few had specific and objective eligibility criteria for free legal services. An interviewee who practised in a law firm explained that the provision of free services was a matter of personal choice for individual lawyers. A number of interviewees expressed that their assessment of eligibility was based on their personal feelings or on the client's appearance – in particular, whether the client appeared capable of paying legal fees. According to one interviewee, the provision of free legal assistance was based on whether the client “look[ed] poor or not” while another remarked, “When people say that they can't afford my fees, I look at their appearance and I try to find out the truth by talking to them”.

Such assessments may not be uncommon, but they rely on arbitrary assessment of economic vulnerability in circumstances where a client's appearance may not reflect their actual financial position. In addition, a means assessment, without more, may be an imprecise measure of eligibility as it fails to take into account social vulnerabilities that often restrict access to legal services for vulnerable groups – such as women, elderly people, and LGBTI persons – even where their household income might otherwise allow for the payment of fees.<sup>27</sup>

While the lack of financial resources was the main reason cited by lawyers for agreeing to provide free legal services, social and thematic criteria were also relevant considerations for some LASPs. For example, some interviewees expressed that if the matter involved a land-related issue, assistance would be provided regardless of the individual's financial capacity. Some respondents gave specific justifications related to their political commitment, such as free legal aid for political prisoners and land issues, among others. Another reported that free

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(MLAW and Enlightened Myanmar Research, 2014); Mariel Fernández, *Capacity Building for Rule of Law Promotion in Myanmar: Report on Public Perceptions of Rule of Law* (Loka Ahlinn and British Council, 2014).

<sup>26</sup> Mediation is generally understood to involve a neutral third person who helps the parties arrive at a resolution of their dispute without the involvement of the courts. However, what is often described as “mediation” in Myanmar can involve the calling of witnesses and visiting crime scenes, as well as the imposition of a range of punishments, such as the signing of a letter agreeing not to commit the offence again (known as *khan wan*) or community labour (see Denney et al, *supra*). In addition, MLAW describes the “mediation” of a domestic violence case where the mediator compelled the perpetrator to sign a *khan wan* or face a punishment (MLAW, *supra* at 41-42).

<sup>27</sup> Carmona, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, *supra* at 91.



legal services were provided to the poor where possible, while Buddhist monks were never charged for services rendered.

Some law firms had developed *pro bono* policies, though generally the LASPs surveyed did not have such policies in place. The absence of specific, clear and objective eligibility criteria for LASPs can pose difficulties for effective access to justice. Eligibility criteria can also serve to safeguard equality before the law, increase trust in legal service providers, and promote greater transparency and certainty in the provision of services for LASPS and justice seekers alike.

By contrast, the survey highlighted that it is mostly CSOs that claim to have developed more or less structured *pro bono* services (with legal aid as their core mandate). Moreover, *pro bono* or legal aid policies developed by CSOs are often quite clear, because they are directly linked to the aims of the organization; for instance, access to justice for the poor, local development, or protection of minorities. In such organisations, legal awareness, legal advice, and individual accompaniment are provided without charge. When individual cases need to be resolved in court, the fee policies may change.

## **KEY OBSTACLES TO THE PROVISION OF LEGAL SERVICES BY LASPS**

The Survey sought to examine the key obstacles to the provision of legal services, from the perspectives of service providers, as well as justice seekers and community members. These issues were canvassed during focus group discussions with 51 community members, as well as key informant interviews with 27 community members. The Survey also explored the proximity between LASPs and the local populations they serve by examining providers' understanding of the needs and perceptions of justice seekers.<sup>28</sup>

Corruption within the formal justice system was identified as one of the key obstacles by all LASPs interviewed. The other key issue raised was the general public's lack of legal awareness, which compounded the impact and consequence of a client's particular legal issue. To a lesser extent, LASPs also identified the competence of judges and the complexity or sensitivity of cases as obstacles to the provision of free legal services.

In addition, community members and justice seekers who participated in the focus groups and key informant interviews indicated that key obstacles included a lack of legal awareness, distrust in rule of law and formal justice institutions, and an apprehension of lawyers. These findings mirror prior outreach programming conducted by the ROLCs, as set out in greater detail in previous Issue Briefs.<sup>29</sup>

### **Obstacles Identified by LASPs**

LASPs identified the two main obstacles to the provision of free legal services as corruption and the general public's lack of legal awareness.

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<sup>28</sup> In general, the Survey found that LASPs with a continued or established presence in their respective communities, engaged community workers and/or longer-term initiatives were better able to provide accurate information on the justice needs of the populations they served, and to outline specific issues faced. Similarly, lawyers working with CSOs were able to provide data on the *pro bono* cases they handled before formal justice institutions, which provided a clearer picture of community justice needs.

<sup>29</sup> The Rule of Law Issue Brief Series is available at: <https://www.rolcmyanmar.org/en/resources>.

## *Corruption*

Corruption in the formal justice system was identified by all LASP interviewees as one of the key obstacles to delivering effective access to justice. The perceived corruption was widespread, permeating all levels of, and positions within, the justice system. One interviewee described a case that had been successfully resolved through the payment of compensation by the accused to the victim. However, the law officer refused to withdraw the case without being paid a substantial sum of money by the accused. When the accused sought to negotiate a reduction in the amount demanded, the law officer's response was essentially, "I am not selling vegetables. You can't bargain here. I have to pay the township law officer, the district law officer, and also show respect to the advocate general." One interviewee expressed that things have begun to change, but conceded that corruption is still ongoing.

This Survey finding is consistent with a number of studies conducted on access to justice in Myanmar.<sup>30</sup> The World Justice Project ranked Myanmar 100<sup>th</sup> out of 113 countries in its 2017-2018 Rule of Law Index, and Transparency International's corruption perceptions index ranks Myanmar 136<sup>th</sup> out of 176 countries.<sup>31</sup>

Corrupt practices appeared to have a more significant impact on cases proceeding in formal justice institutions. Interviewees indicated that formal legal processes often take longer because their clients "cannot afford the amounts required by the clerks". Other interviewees insisted that, in some cases, clients themselves asked to pay public stakeholders, as they saw it as the only means to obtain a favourable decision or enforce their rights.<sup>32</sup>

Such statements are troubling. They highlight the disproportionate impact of corrupt practices in formal and informal legal proceedings on vulnerable and disadvantaged groups, who cannot afford the sums demanded.<sup>33</sup> In addition, while legal practitioners have ethical duties to the court and to the administration of justice, the extent to which LASPs discouraged or advised clients against bribing officials was not clear. For instance, in the above example, the lawyer advised the accused to seek a reduction in the bribe demanded by the law officer.

## *Lack of Legal Awareness*

The public's lack of legal awareness was also identified as a key obstacle to providing legal aid services. While other studies have identified a lack of legal awareness as a barrier to justice, they have usually been from the perspective of justice-seekers, rather than service providers. For instance, in ROLC forums and trainings, many have reported that lack of public awareness correlates with low government accountability and poor performance of obligations, as well as public disinterest in governance.

Seventy percent of LASP interviewees in the Survey identified the general public's lack of legal awareness as a serious concern for several reasons.

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<sup>30</sup> See MyJustice Policy Brief 2018, *supra*; UNDP Consolidated Summary Report, *supra*; Denney et al, *supra*, at 18, 31, 38, 44 and 45; Fernández, *supra*; Kyed, *supra*.

<sup>31</sup> World Justice Project, *Around the World by Region (2017-2018)* at 18; Transparency International Rankings (2016).

<sup>32</sup> See also Denney et al, *supra* at 31, 44, and 45.

<sup>33</sup> *Id* at 31.

First, LASPs indicated that the general public's lack of legal awareness impacted their work and the assistance they were able to provide. This lack of awareness could manifest in different ways depending on the dispute – from clients failing to seek legal assistance at an earlier stage, when interventions would have been more successful, to complicating the provision of legal advice because of clients' lack of familiarity with the systems and institutions themselves.

Second, LASPs indicated that the lack of legal awareness impacted individuals' ability to interact with police and the formal justice system. A lawyer in Taunggyi reported, "Another issue is that people are not well educated. They have no legal awareness. When they are in contact with law enforcement officers, like the police, people are quite nervous".

Finally, many interviewees reported that a number of disputes and cases could have been prevented or resolved more quickly if their clients had had basic information about their rights and obligations from the outset. In such circumstances, legal knowledge could have been a bridge to better outcomes for justice seekers, so that commonplace disputes – from contract issues to land and familial grievances – could be avoided. Equally, such legal awareness would empower individuals and organizations to take the lead in finding sustainable solutions to reoccurring issues in their communities. For LASPs, widespread legal knowledge could reduce the number of cases they have to take on, as well as the time and attention that any particular dispute requires.

While legal empowerment of vulnerable and disadvantaged groups may not be the key to addressing every legal challenge, the LASPs surveyed indicated that a better understanding of rights and duties among the population could help the public in a number of ways – from negotiating with public authorities to reducing discriminatory practices, and from seeking non-legal means of settling disputes to recognizing when it is necessary to obtain legal assistance. To that end, all of the CSOs interviewed included awareness-raising and training in rule of law principles as part of their broader engagement initiatives. However, because general knowledge of the law is so low, CSO members indicated that many of the trainers conducting legal seminars lacked an adequate grasp of rule of law principles. Broader outreach by rule of law and justice initiatives, including the ROLCs, in collaboration with development partners will therefore be crucial to improving access to justice and strengthening the rule of law in Myanmar.

### *Obstacles Identified by Community Members and Justice Seekers*

While the Survey focused mostly on LASPs, it also sought to understand perceptions of the justice system from the perspective of justice seekers.

The key obstacles identified by justice seekers and community members during the focus groups and key informant interviews were (i) a lack of legal awareness; (ii) a distrust in rule of law and justice institutions; and (iii) an apprehension of lawyers. As noted previously, the Survey findings mirror the recurring themes expressed by participants at ROLC outreach programming.

### *Lack of Legal Awareness*

All of the community members surveyed indicated that the lack of legal knowledge among the population is a significant problem in Myanmar, and many spoke about the direct consequences of this lack of knowledge for their communities. One interviewee gave an example of a case in

which a disabled woman had been raped, which was “settled” for \$100. The interviewee expressed that this result was due to the community not understanding rule of law principles.

A lack of legal awareness is more likely to disproportionately affect those who are disenfranchised or vulnerable, including the disabled, women, children, people from remote areas, drug users, ethnic minorities and LGBTI people. Language barriers further compound this issue in certain ethnic minority areas of Myanmar, where Burmese is not spoken or understood. One interviewee indicated that laws and procedures prove to be a greater challenge in these communities, such as Pelang Township in Shan State, as individuals do not know what to do when an issue arises.

### *Distrust in the Rule of Law and Justice Institutions & Suspicion of Laws*

Consistent with other research,<sup>34</sup> most respondents expressed a lack of trust in the rule of law and in justice institutions, and had a low opinion of the Myanmar legal framework. This was true regardless of whether the individuals had experience of the justice system.

Respondents who had experience with prosecutions, trials or complaints felt that the justice system – from the laws themselves to the functioning of the institutions – did not serve them or the general public, but rather served the interests of the rich and powerful.

A number of respondents reported feeling that many laws are outdated, dating to British colonial times, and are not adapted to Myanmar society. Some expressed the view that laws and policies are not developed and implemented for the people, but to serve the interests of the most powerful.

Some respondents perceived justice institutions themselves as obstacles to achieving the rule of law, and expressed the view that people’s lack of knowledge of the law was sometimes used to deny them their rights. A paralegal provided an example of a case of domestic violence. The victim had tried to report the case to the police, but they demanded money before filing charges. When the victim returned to the police station with the paralegal, the police filed the case without asking for money. Many CSO members raised concerns about the level of knowledge of government officials concerning the rule of law, and some suggested additional training for officials alongside legal training for the general public as a possible remedy to address any knowledge gaps.

CSO representatives also expressed the view that their communities do not believe that equality before the law is effective in Myanmar. There is a perception that justice seekers in vulnerable situations are not treated fairly. One farmer shared his experience of an encounter with the formal justice system. A few years earlier, he claimed, the military had destroyed some of his and other farmers’ crops. They decided to file a complaint against the military forces, but the police refused to file the case. More recently, he and some other farmers in his village were accused by the military of vandalism and illegal occupation. The police filed a case against the farmers and they were prosecuted. Consequently, the farmer expressed a distrust of formal legal institutions, as he perceived that farmers like him were not treated fairly.

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<sup>34</sup> See, for instance, MyJustice Policy Brief 2018, *supra*; UNDP Consolidated Summary Report, *supra*; Denney et al, *supra*; MLAW, *supra*; UN Women and Justice Base, *supra*; Kyed, *supra*.

All respondents reported the importance of alternative pathways to resolve their disputes. Many justice seekers, particularly marginalized people and people living in rural and remote areas, do not view filing a case in court as an effective mechanism for claiming their rights or resolving a dispute. Instead, they prefer to use local or informal ADR mechanisms.<sup>35</sup> This is discussed in greater detail in the section below.

The lack of legal awareness, coupled with the suspicion surrounding the purposes for which laws are created or used, appears to contribute to negative perceptions of the broader legal framework. While there is a general lack of knowledge and understanding of rule of law concepts and principles, community members and justice seekers expressed that the rule of law is a major priority in Myanmar, and that greater legal awareness is central to promoting the rule of law. In both Mandalay and Taunggyi, many CSOs highlighted the work of the ROLCs as playing an important role in raising legal awareness and consciousness of rule of law principles.

### *Negative Perceptions of Lawyers*

The Survey revealed that community members and justice seekers have varied and complex perceptions of lawyers and law firms. Most justice seekers and community members that participated in the focus groups and key informant interviews indicated that they not had any contact with the justice system or with the legal profession. This is consistent with the views expressed by CSO members, who indicated that most people – especially those living in rural areas or members of disadvantaged groups – had very little knowledge of the precise role of a lawyer, and had never had any contact with one. As a result, seeking the support of a lawyer as a preferred means of resolving a dispute was not raised by a single participant during any of the focus groups.

Currently, one of the ways that the public is being connected with the legal community seems to be through CSOs. Most CSOs interviewed had a reasonable understanding of lawyers as well as how legal aid and *pro bono* operate. Some already worked in partnership with sole practitioners or law firms. However, certain CSO respondents reported mixed feelings about lawyers: though they trusted the lawyers they had already worked with, many expressed a distrust towards the legal profession generally.

One interviewee suggested that individuals should be introduced to lawyers, and made aware of different types of lawyers (such as those offering *pro bono* and/or free services). Others, however, expressed doubts about the ability of lawyers to adapt their work to the needs and perspectives of the population.

Of the 55 focus group participants and 27 community members interviewed, the majority indicated that working with lawyers was not the preferred method of resolving the most common disputes. In many cases, they reported engaging with lawyers only when other approaches had failed or stalled, or when they had no choice but to engage with the formal justice system.

To achieve a functioning legal aid system in Myanmar, it will be necessary to address the negative perceptions of lawyers and justice institutions held by community members, justice

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<sup>35</sup> United States Institute for Peace (USIP) Rule of Law Center, *USIP Burma/Myanmar Rule of Law Trip Report: Working Document for Discussion*, (2013) at 5.

seekers and CSOs. This is particularly true given the limited definition of ‘legal service providers’ set out in the *Legal Aid Law*, which contemplates approval for lawyers and law students alone. It will be necessary to bridge the divide between lawyers and the justice seekers they serve to improve access to justice for vulnerable and disenfranchised groups.

## PREFERENCES FOR ACCESSING JUSTICE MECHANISMS

As set out above, the Survey revealed the overwhelming preference for alternatives to formal justice processes, where possible. Although no statistics exist on the percentage of disputes resolved outside the formal justice sector, the Survey results are consistent with research that suggests many people in Myanmar prefer to resolve disputes informally and to avoid interacting with the police and court system whenever possible.<sup>36</sup> A recent study found that when disputes arose, no action was taken in nearly half of all cases; where action was taken, the majority of people preferred to address issues locally through direct negotiation or with the assistance of local officials such as the Ward or Village Tract Administrator.<sup>37</sup> Contributing factors leading people to identify and use ADR approaches are well-known and documented in Myanmar, including a lack of trust in the justice system and in the competence of lawyers.<sup>38</sup>

However, beyond the common preference for ADR, the Survey found significant divergence in both the types of dispute resolution mechanisms that are pursued, and the LASPs that use them.<sup>39</sup>

According to Survey participants, the choice of dispute resolution mechanism is influenced by a variety of factors, including the type of dispute, location and identities of the parties, local dynamics and ethnic backgrounds. For instance, the class or ethnicity of the parties involved, as well as the urban or rural setting, can result in the selection of different ADR mechanisms in otherwise comparable cases. In Shan State, for example, the focus group reported that the formal justice system was more commonly used for motor vehicle accidents, whereas drug or land disputes were more frequently the subject of ADR.

The selection of ADR mechanism also depended on whether a third party was involved – such as ward administrators, religious actors, custom practitioners, village elders, or CSOs. Third parties tended to employ different approaches or procedures to resolve a dispute,<sup>40</sup> perhaps in part a reflection of different social values or priorities.

The Survey further revealed that LASPs had divergent views of ADR, and differing levels of involvement with these mechanisms. The variance depended, among other factors, on the practitioners’ level of skills, the organization’s general approach and the type of issue raised.

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<sup>36</sup> See ROLCs Issue Brief No. 1, “Leading Community Justice Issues”, *supra*; MyJustice Policy Brief 2018, *supra*; UNDP Consolidated Summary Report, *supra*; Denney et al, *supra*; Kyed, *supra*.

<sup>37</sup> MyJustice Policy Brief 2018, *supra*, 3.3.

<sup>38</sup> See Denney et al, *supra*; MLAW, *supra*; International Commission of Jurists, *Right to Counsel: The Independence of Lawyers in Myanmar* (ICJ, 2013) at 15; USIP Rule of Law Center, *supra*; UN Women and Justice Base, *supra*.

<sup>39</sup> Though there is a clear preference to avoid the formal justice sector wherever possible, the Survey indicated a low level of awareness among LASPs of formal ADR processes, such as conciliation, negotiation and arbitration. This may be an area for further study and training to ensure that best practices and rule of law principles are followed.

<sup>40</sup> See Denney et al, *supra*; MLAW, *supra*; UN Women and Justice Base, *supra*; Kyed, *supra*.

For instance, of the CSOs interviewed, a large majority reported a preference for dealing with cases directly and trying to resolve disputes through mediation or advocacy support.<sup>41</sup>

In terms of the types of disputes and/or issues most commonly resolved through ADR, the Survey found that ADR mechanisms were mainly used for petty offences, family disputes, juvenile offenders, and minor conflicts with administrative departments. For instance, in Kachin State, mediation and conciliation involving traditional customary authorities appeared to be the main mechanisms employed for resolving the most common civil disputes, such as loans or family disputes concerning divorce, alimony and inheritance. Some criminal matters – such as theft and assault – were also resolved through these mechanisms. It was reported that some serious crimes – particularly rape cases and murders – were also dealt with by traditional customary authorities. ADR mechanisms appeared to be important in locations where the state was less effective, such as remote areas and self-administered zones.<sup>42</sup>

Elsewhere, ADR mechanisms were also employed for more widespread cases, such as land confiscation claims. CSO members reported organizing a series of initiatives and public events (such as demonstrations) intended to put pressure on the authorities, with the aim of resolving the disputes. This mobilization was intended as a first step towards broader redress mechanisms, including complaining to the local administration or seeking support from a politician, political party, or member of parliament to negotiate directly with the other party to the dispute.

The Survey found that in circumstances where justice seekers were more likely to use ADR, the links between the population and the formal justice system were more limited. This is significant for a number of reasons.

First, as many people do not engage with formal justice institutions to resolve their disputes, they only encounter such institutions when they are forced to (that is to say, when they are prosecuted). The consequence of this limited interaction is that many justice seekers view the formal justice system as an inefficient, cumbersome and prolonged means of resolving their disputes or seeking redress. This serves to reinforce negative perceptions of the formal justice sector.

Second, the public's limited interaction with formal justice institutions may act as a barrier to fostering public legal awareness of the public's rights and obligations, and of the corresponding duties of public officials and legal institutions. As discussed previously, the consequences of low legal awareness by the general public for justice seekers and the LASPs that serve them should be an ongoing concern of government, development partners and CSOs.

Finally, such separation may hinder efforts to increase trust in legal institutions and service providers, as well as efforts to combat corruption. Given the overwhelming preference for ADR mechanisms for many people in Myanmar, the absence of links between the general public and

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<sup>41</sup> This is consistent with recent studies that have conducted in-depth mapping and analysis of alternative pathways, showing that customary justice is commonly used to resolve certain disputes. See generally, Denney et al, *supra*; UN Women and Justice Base, *supra*; Equality Myanmar, *From Victims to Agents of Change: Lives and Voices of LGBT Individuals* (Yangon 2016).

<sup>42</sup> Some reports have observed that customary justice systems may play a key role in dispensing and supporting access to justice in fragile states, even if they may hinder fairness or contravene human rights standards in some instances. See for instance, Harper, E., *supra*; Harper, E., *Working with Customary Justice Systems: Post-Conflict and Fragile States* (IDLO, Rome 2011); Ubink, J., *Customary Justice: Perspectives on Legal Empowerment* (IDLO, Rome 2011).

the formal justice sector in such areas may stunt greater access to justice and hinder the impact and function of the legal aid system.

As a result, while ADR mechanisms are presently an important part of the legal framework and a critical avenue to seek redress, efforts to bridge the gap between formal justice institutions and service providers, and the public they are meant to serve, should also be undertaken.

In addition, further study should be undertaken to better understand the types of ADR used and preferred by justice seekers and LASPs in different regions and for particular key justice issues.



## RECOMMENDATIONS

### TO THE LOCAL AND NATIONAL GOVERNMENT

- Fully implement the *Legal Aid Law* (2016).

The Myanmar government should prioritize implementing the *Legal Aid Law* (2016) and adopting any necessary regulations to establish a functioning and operational legal aid system throughout the country. In order to adequately serve the needs of the population, the regulations should include CSOs as key partners in the provision of legal aid services.

- Establish Legal Aid Bodies at the state and regional levels, with the support and guidance of the international community to ensure best practices, and ensure appropriate funding to the relevant bodies.

Staffing and training of the Legal Aid Bodies at the state and regional levels should be undertaken as a priority. Training of formal justice actors on best practices for the provision of legal aid is needed, including respect for confidentiality, avoidance of conflicts of interest, and the necessity of obtaining instructions. Appropriate funding should be provided to ensure that the legal aid system is fully functional across the country, and that necessary oversight mechanisms for legal aid providers are in place.

- Continue to participate in ROLC forums and discussions to identify solutions to community justice issues and foster trust in formal justice mechanisms by community members.

ROLC-fostered interactions between government representatives and the local community have proved critical to creating working relationships between the government and communities, as well as supporting efforts to help resolve community justice concerns. Transparent, clear engagement on community justice issues is critical to improving access to justice, and key to building trust in the formal justice sector.

### TO CIVIL SOCIETY ORGANIZATIONS

- Partner with INGOs and donor governments to increase organizational capacity and improve the delivery of legal aid services for vulnerable community members in a manner that is fair, transparent and consistent with rule of law principles.

INGOs can offer useful assistance to improve the delivery of legal aid services to vulnerable community members. Such assistance includes the provision of technical services to particular CSOs and NGOs, advice concerning best practices to improve organizational capacity, and assistance in addressing particular issues outside their areas of expertise. Partnerships with INGOs can be especially useful in ensuring that legal aid is provided in a fair, transparent and equitable manner, and should be encouraged.

- Through programming and community engagement, target harmful cultural norms, practices and perceptions that impede access to justice for vulnerable community members.

Encourage communities to respect the rights of vulnerable individuals, including the disabled, women, children, people from remote areas, drug users, ethnic minorities and LGBTI people. Target corrupt practices and combat negative perceptions of lawyers and the formal justice sector wherever possible.

- Continue to provide access to legal information and pro bono legal assistance.

CSOs and legal practitioners providing free or reduced fee services are encouraged to provide access to legal information and pro bono legal assistance to vulnerable and disadvantaged groups. Efforts to provide such assistance in an equitable manner, consistent with rule of law principles, are encouraged.

## **TO DEVELOPMENT PARTNERS**

- Support local and national governments in collecting baseline data on community justice issues and preferences for dispute resolution to inform service provision of legal aid in high need areas.

Baseline data regarding community justice issues and current dispute resolution practices is critical to identifying the communities where services are most urgently needed, as well as the types of assistance that should be provided through the legal aid system. International donors should support local and government actors in collecting data, especially provision of technical advice and tools, and help CSOs identify advocacy efforts based on the results of data collection.

- Support CSOs through grants, capacity building and provision of technical advice to enable and improve the delivery of services by LASPs.

International development partners should identify CSOs and legal service providers interested in receiving support, whether through grants or technical advice, in the design and implementation of legal aid and pro bono services.

- Support the implementation of the *Legal Aid Law* (2016), including the establishment of Legal Aid Bodies throughout the country.

In addition to building the capacity of CSOs and legal service providers to offer legal aid or pro bono services, international donors should also support CSOs in advocating to local and national government actors on the implementation of the *Legal Aid Law* and on broader justice sector reform to target key access to justice issues.

- Support capacity development of justice actors, including judicial officers, law officers and police, and informal actors, including community and religious leaders.

Capacity development initiatives to address access to justice issues and legal aid provision are needed. Broader outreach and training initiatives are necessary, and should capture capacity development in the Legal Aid Bodies that will be established upon implementation of the *Legal Aid Law*.

- Support research initiatives to continue to grow the evidence base on key justice issues.

Research initiatives are critical to inform policy development and national justice sector reform initiatives. International development partners are encouraged to support research initiatives to monitor the efficacy and prevalence of LASPs, changes to legal awareness of justice seekers, and the status of community perceptions of formal and informal justice mechanisms.

## **TO THE RULE OF LAW CENTRES**

- Continue to work towards building a functioning, comprehensive and accessible referral system for justice seekers.

Support services are only as good as the referral networks that lead justice seekers to them. The ROLCs should continue to grow the Legal Referral System so that it has a broader reach into other areas of Myanmar and a comprehensive list of LASPs and the services they provide.

- Continue to provide specialized capacity development support and training to LASPs, including lawyers, paralegals and CSOs to help ensure that legal aid is provided in a just and ethical manner consistent with rule of law principles.

The ROLCs have developed and delivered a series of specialized legal courses across Myanmar designed to enhance the knowledge, skills and values of LASPs. This includes two-day courses on (i) practical legal skills, including developing a theory of the case and questioning witnesses; and (ii) client-centered lawyering and legal ethics. The client-centered lawyering course is attended by all LASPs who serve as partners in the ROLCs Legal Referral System, and provides important guidance for LASPs on issues such as confidentiality and the avoidance of conflicts of interest. These courses focus on ensuring that legal aid services are provided in a matter consistent with rule of law principles, ethical standards and gender equality.

The ROLCs should continue to provide these courses for LASPs, as well as other specialized courses which provide more in depth substantive training on specific community justice issues, including SGBV and land disputes.

- Increase the reach of ROLC activities, through expanded programming to maximize community exposure, as well as more trainings on key local issues to increase legal awareness and build trust between LASPs and the justice seekers they serve.

Participants highlighted the importance of the ROLC trainings and outreach initiatives in increasing legal awareness within their communities. In order to maximize community exposure and improve the Legal Referral System, more programming and trainings on key local issues should be undertaken to complement the existing training courses offered.

Expansion of mobile trainings at the village level for community leaders, LASPs and justice seekers, together with continued support for educational community theatre programming, online training courses and illustrated awareness materials on rule of law concepts should be prioritized.

- Provide a forum for discussion and coordination between the government, informal justice actors, CSOs and local lawyers to address key justice issues and take action on proposed solutions.

The ROLCs should continue to use their convening power to bring together key stakeholders and to foster the creation of networks and relationships to address access to justice issues. This

should include trainings, community forums and related discussions on key justice issues, such as land reform, SGBV and the rights of marginalized groups, and help organizations identify implementation strategies for proposed solutions.

- Support the capacity development of critical stakeholders through specialized legal training, including: national, state/regional and local government, informal justice actors, CSOs and local lawyers.

Through broader training and outreach initiatives, the ROLCs should continue to build the capacity of government actors, informal justice actors such as community and religious leaders, CSOs and local lawyers to address access to justice issues and promote a comprehensive legal aid system in Myanmar.

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Printed August 2018