



**USIP Burma/Myanmar Rule of Law Trip Report
June 2013**

Working Document for Discussion*

Prepared by the USIP Rule of Law Center

* The USIP team continues to develop the content of this working document through discussions and consultations being held in Burma/Myanmar during June and July 2013. All comments and input are welcomed and can be communicated to the team members listed at Annex IV.

Acknowledgments

The USIP team would like to thank a number of people without whom its work in Burma/Myanmar generally would not be possible, including the February 2013 Burma/Myanmar trip, workshops and this report. Thanks goes to Judy Tin May Thein Ko of Asia 21 and her entire support team, all of whom were instrumental in providing logistical support, translation and interpretation, and advice while we traveled throughout the country. Their patience with our endless questions, willingness to step up to assist in addressing dilemmas both small and large, and eagerness to connect us with an incredible array of perspectives were nothing short of remarkable. We are also thankful to Eric Bergthold and the USAID Burma team who partnered with us and lent valuable support for the trip and our workshops, and to David Yang and the entire U.S. Government inter-agency Rule of Law assessment team. Thanks also go to our Track II partner, Asia Society, and in particular, Suzanne DiMaggio and Debra Eisenman, who have been wonderful partners. We are very appreciative of the support from David Smock, USIP Senior Vice President. And finally, we extend our gratitude to Priscilla Clapp who has been a constant and reliable source of expertise and guidance for our work in Burma/Myanmar. Priscilla, who is a former Chargé d'Affaires in Burma/Myanmar and serves on USIP's International Advisory Council, assisted in the editing of this report and in drawing out key elements into a concise executive summary.

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Executive Summary

Building on earlier work by USIP in Burma/Myanmar during 2012, a USIP team visited the country from February to March 2013 for wide-ranging consultations with rule of law stakeholders to explore how external partners can best support the ongoing rule of law reform process.¹ During the visit, in addition to meetings with both government and non-government groups and individuals, the USIP team conducted a series of rule of law workshops. Workshops were held in Mawlamyaing, for participants from Karen and Mon States, and in Nyaung Shwe and Taunggyi, Shan State. The workshops provided USIP with a structured and focused opportunity to measure rule of law awareness among selected ethnic groups and to explore their immediate rule of law concerns. They also represented a unique opportunity for a wide variety of people from throughout Burmese society, including both government and non-government sectors, to discuss together issues related to the rule of law. Finally, the workshops allowed the USIP team to explore various rule of law-related concepts with the participants through directed group exercises and discussions, and to share experiences of rule of law reform practices undertaken in other transitional and conflict contexts.

This report provides a detailed portrait of the team's experiences and the input and insights from local actors. The report also includes recommendations offered by workshop and meeting participants and USIP on where and how international assistance for rule of law reform can be most useful. In the body of the report, readers will find a wealth of insights into community perspectives, as well as hopes and doubts about the reform process. Moreover the report highlights distinctions in regional and ethnic group understandings of the rule of law and priorities for reform. The report also conveys rich detail on the many aspects of the rule of law addressed in the workshops as well as the methodologies and dynamics of the workshops.

Among the **most important findings** of the visit are the following:

First, there is no common understanding of the meaning of the term the 'rule of law.' Communities lack knowledge of basic laws, legal procedures and mechanisms for accessing their rights. Many perceive the rule of law simply as a set of laws and institutions that, as currently constituted, are designed to reinforce existing power dynamics including the dominance of the security services and the wealthy over the society. For those stakeholders concerned primarily with security, the 'rule of law' begins and ends with 'law and order'. Others interpret it more broadly to include concepts of rights and justice but believe the judiciary, generally perceived to be corrupt in its current state, is a serious obstacle to achieving the rule of law. In general, people do not see the law as being of any relevance or benefit to their daily lives. When faced with justice problems, some community members try to avoid formal justice mechanisms, resorting instead to local-level dispute resolution mechanisms they perceive to be more reliable, accessible and affordable. Discussions around rule of law reform tend to be narrow in focus, without a full understanding of the

¹ The names and contact details of the team members can be found at Annex IV, and the trip schedule can be found in Annex 1.

range of elements and role of numerous actors necessary for the rule of law to exist in a society.

Second, there is a wide divergence between how the government officials and lawmakers perceive current rule of law needs and priorities on the one hand, and how the general populace views the country's culture of justice and their place within it, on the other. The central authorities tend to perceive of the rule of law in terms of laws, institutions and formal systems, while the population seeks justice and fairness in the broader culture of the country. There is a perception that laws are not applied equally to all, that current law-making processes do not provide for any meaningful degree of public participation and that there is a lack of accountability of decision makers at all levels, from government to security forces to community-level decision makers. Furthermore, people in periphery areas feel that government authorities neither understand nor take an interest in their well-being and development, and they see the ruling classes as heavily prejudiced against non-Burman ethnicities.

Third, there is a deep-rooted lack of trust and perceived lack of respect between disparate groups and sectors that serve to inhibit strategic collaboration to promote rule of law, including between the people and the government (especially security forces), among ethnic and religious groups, and even within these groups. In conflict areas, the local population is distrustful of those security forces, armed groups and community leaders who previously ruled in an authoritarian manner and abused their powers. Often subject to the justice systems established by local armed groups, people feel caught between the demands of government and non-government armed actors. Workshop participants observed that overcoming this legacy of mistrust will require negotiations within ethnic groups, as well as between those groups and the central government.

Fourth, entrenched corruption is a major challenge to the promotion of and respect for the rule of law. Corrupt practices are deeply embedded in the country's life and culture to the extent that many do not even see these practices as being corrupt (as defined by international standards). The judicial system itself has been severely corrupted and perverted during decades of military rule blatantly to serve the interests of government security and wealth accumulation. Defendants lack access to legal defense, judgments are 'sold' to the highest bidder, and judges seek direction from government authorities before ruling in high profile and political cases.

Finally, the lack of a clear strategy and coordination between government entities for rule of law reform presents serious barriers to the implementation of a strategic and holistic approach to reform that also takes into account institutional weaknesses and challenges. The executive branch does not have a body for comprehensively addressing reform in the way that the legislative branch has its rule of law committee. While the Attorney General's Office has been given direction by the President to lead the reforms, it lacks the authority over other relevant bodies (specifically the Supreme Court) to itself advance the reform process. The Constitutional Court has rapidly become a political football between the legislative and executive branches and appears unwilling to make independent judgments about the constitutionality of new laws or government actions. Furthermore, law-making

procedures do not yet allow for adequate coordination between the executive and legislative branches or for sufficient public participation. Reforms risk being undermined as long as the government lacks a clear reform strategy and the authority issues remain unresolved.

The USIP experience with the workshops was a highpoint of the visit. It is not surprising that the team found the formal judicial system in the more remote areas to be even more rudimentary and inaccessible than in large cities in the center of the country, but the degree of enthusiasm and open engagement among all the workshop participants translated into almost instant comprehension of the rule of law concepts the team was presenting. Consequently, the team had to move more quickly than anticipated into advanced rule of law training that would have taken much longer to access in other countries where USIP has worked. The high level of intellectual capacity in Burma/Myanmar promises to make rule of law programming very productive in both urban and rural areas and among various ethnic groups.

USIP believes that engagement on rule of law issues in Burma/Myanmar must be balanced both vertically with government and non-government actors, and horizontally across different ethnic and religious groups and government sectors, in order to foster inclusive participation in the creation and promotion of rule of law reform initiatives. This can help simultaneously in transforming existing conflicts and creating the kinds of inclusive systems and policies necessary for sustainable peace. The team found, for example, that in the Mon, Karen, and Shan State workshops, participants interacted relatively freely and openly between different ethnic groups and between government and civil society, even where the different groups had no previous opportunity for this kind of exchange. This experience suggests that such mixed workshops can play a role not only in advancing appreciation for rule of law concepts, but also in building greater trust and understanding between different cultures and sectors in the society, and especially between civil society, security forces and government officials.

On the basis of its experience with this and previous visits to Burma/Myanmar, USIP concludes that there is a very wide opening for the international community to assist in advancing the rule of law in the country. Both government and civil society actors are anxious to address the country's rule of law shortcomings and would welcome international assistance and advice in doing so. However, we believe they will resist efforts from outside to dictate rule of law norms that they consider alien to their culture. They will wish to listen, learn, and then adapt rule of law concepts to the needs of the current transformation. This will take time and there will undoubtedly be periods of trial and error. They will also wish to focus on areas of the rule of law that they consider to be priorities. Right now those priorities appear to be 1) the development within government and society of a deeper understanding of the fundamental principles of democratic governance and the rule of law; 2) the creation of a national strategic plan-of-action and effective implementation mechanisms for rule of law reform; 3) assistance in reviewing, drafting and reforming priority laws, including through the provision of legislative drafting and law reform training for the executive and legislative branches of government; 4) establishment of mechanisms to enhance communication and collaboration between

government, civil society and local communities around rule of law reform efforts; 5) developing and implementing policies and systems that enhance access to information and government transparency; 6) providing community legal education regarding the law, rights and responsibilities, and ensuring increased access to justice particularly for vulnerable individuals and groups.

In addition to detailed notes on all the meetings and workshops conducted by USIP during its recent visit to Burma/Myanmar, the report provides a detailed menu of identified rule of law deficiencies that need to be addressed either with or without outside advice and assistance in order to strengthen the rule of law in the country. USIP recommends, however, that international assistance should be undertaken carefully and with as much coordination as possible, bearing in mind that any rule of law work in Burma/Myanmar will inevitably touch on sensitive societal and political issues that the country must work through on its own during this transition. It is our experience elsewhere that rule of law reform efforts must avoid taking a purely technical approach. They must be attuned to the country's power dynamics, conflict drivers and cultural norms to be successful, and they must be based on a serious appreciation of the historical, social, cultural and political experiences that have defined the country.

Introduction

The Context for Rule of Law Reform

In 2010, Burma/Myanmar began the difficult transition from a military government to an elected leadership broadly representative of its people.² In November 2010, parliamentary elections, considered flawed by many in the international community, gave the ruling Union Solidarity and Development Party (USDP) more than 75 percent of the elected seats. The Parliament convened in January 2011 and elected the former Prime Minister of the military government, Thein Sein, as president.

Throughout 2011, contrary to international expectations, President Thein Sein's new civilian government (comprising many retired military officers from the former government) embarked on implementing a broad agenda of political, economic, and social reforms. The government relaxed press restrictions, released hundreds of political prisoners, enacted laws allowing for peaceful demonstrations and the formation of unions, and signed a number of ceasefire accords with armed groups. In December 2011, the main opposition party, the National League for Democracy (NLD), was re-registered as an official party and fielded candidates for parliamentary by-elections held in April 2012. The leader of the NLD, Aung San Suu Kyi, won the open seat in the Delta town of Kawmhu. In all, NLD candidates took 43 of the 45 seats up for election.

The domestic reforms in the country were accompanied by efforts to end years of international isolation, particularly from European countries and the United States. Many high-level foreign officials visited in 2011 and 2012, including U. S. Secretary of State Hillary Clinton and President Barack Obama. While Asian companies had already been operating in the country, the relaxation of sanctions against the country in response to its reforms allowed European and American businesses and international financial institutions, who had been previously barred from operating in Burma/Myanmar, to explore business and development opportunities. It also encouraged increasing numbers of international non-government organizations (INGOs) to launch projects in the country. In recognition of the advances it had made, the country was appointed to chair the Association of Southeast Asian Nations (ASEAN) in 2014.

The degree of change in the country over such a short period of time is remarkable. But the transition period is still just beginning. Much remains to be done and the government faces many challenges to implementation of its planned reforms. During the roughly five decades of military rule, the placement of retired military officers in civilian ministries, top-down decision-making, low salaries, and a weak higher education system created an anemic government bureaucracy without the political will or capacity to enact new policies. The legacy of authoritarianism has left the country with few mechanisms for constructive engagement between government and civil society. Meanwhile, as is common to countries

² The former military government changed the country's name to 'Myanmar' in 1989. The official U.S. government policy is to refer to the country as 'Burma'. For the purposes of this report, the combination of names is used throughout.

undergoing political transition, new domestic conflicts are emerging from the context of rapid change. At the national level, the parliament has become more independent and proactive than expected, challenging both the executive and judicial branches, initiating legislation, and developing important patterns of interaction among the political parties that will affect democratic development in the future. Not surprisingly, there are many throughout the government and society who, for a range of reasons, are uncomfortable with these rapid reforms. Across all sectors, both within government and across civil society, within political parties, the private sector, and the entrenched economic elite of the military, ex-military and their business cronies, exist individuals and groups who can, at best, act as key supporters or, at worst, damaging spoilers to the reform efforts. Finally, despite the dramatic reforms that are bringing new freedoms to the political environment in urban areas, the reforms have yet to improve the lives of the country's vast rural population, much of which exists in a world far removed from the center, both geographically and psychologically.

For the international community, determining how to support efforts to overcome these and other challenges requires an appreciation of the historical, social, cultural and political dynamics that have defined the country. Over the years, the country has faced defining moments, including coup d'états, civil and ethnic resistance movements, military crackdowns, ceasefires, pivotal elections, and a horrific natural disaster, Cyclone Nargis. Equally defining for the country and its population have been the long periods of time marked by uncertainty, job and food insecurity, and conflict. Decades of suffering and trauma have left entrenched wariness, if not outright fear and hostility, toward government, military, and other groups, creating major barriers to collaborative efforts to promote the rule of law.

A fundamental dynamic of the current context is the country's multifaceted ethnic situation and the long and complex history of ethnic-based conflict. For decades, many ethnic groups in Burma/Myanmar have been fighting for various degrees of autonomy from a central government seen to represent the interests of the ethnic Burman group. They seek to sustain their own languages and cultures and to retain control over political and economic life in their regions. During military rule, the government operated under a divide and rule mentality, discouraging inter-ethnic and inter-religious collaboration. Since 2010, there have been some positive steps toward addressing ethnic conflict. Non-Burman ethnic groups, hereinafter referred to in this report as "ethnic groups,"³ now have greater representation in the Parliament and state-level elected government has been introduced. There has been a shift in government discourse around the ethnic issue, with the previously taboo subject of federalism now openly debated. The President's office has held rounds of peace talks with various ethnic militias, reaching thirteen ceasefire agreements as of early 2013. The political leadership has acknowledged that ceasefire agreements alone will not create sustainable peace and has established a framework for peace

³ The Myanmar Government officially recognizes 135 distinct ethnic groups in the country. Major non-Burman ethnic groups include the Shan, Karen, Rakhine, Mon, Kachin, Kayah, and Chin. The non-Burman groups prefer to be referred to as "ethnic groups" or "ethnic nationalities," rather than as "minorities." For the purpose of this report, we refer to the vast array of non-Burman ethnicities as "ethnic groups."

negotiations to resolve fundamental political issues. However, the continuing conflict with the Kachin and communal violence marked by religious prejudice in Rakhine state, central regions and Shan State cast a cloud over reform efforts. These clashes highlight the challenges that latent inter-communal tensions pose to the government as the reform process surfaces old grievances, which may be exploited by those seeking to obstruct reform.

Another pressing issue challenging reform and peace processes relates to conflicts over land and other resources. Local communities accuse the Union and local authorities of improper land confiscation and mobilize communities to draw attention to environmental and social concerns over inadequately regulated foreign-backed infrastructure and mining projects. Many from all ethnic groups are concerned about government, so-called “cronies”, and foreign companies benefiting from the abundant natural resources (many, but not all, of which are located in outlying ethnic states) without consideration for the development needs of those areas. In November 2012, police cracked down on demonstrators protesting against the seizure of land for the purposes of expanding a China-backed copper mine in Letpadaung, near Monywa in the northwest of the country (a Burman majority area). The heavy-handed response by riot police, which resulted in serious injury to Buddhist monks and other protestors, attracted domestic and international condemnation and had many questioning the sincerity of government reforms that had included laws protecting the right to peaceful protest.⁴

As these issues illustrate, the pace and extent of the reforms in Burma/Myanmar over the past two years have brought unresolved grievances into the open and given rise to potential instabilities and public disorder, presenting the government with a delicate balancing act between expanding democratic governance, promoting economic development, expanding freedoms, rule of law and justice on the one hand, and maintaining order and stability, on the other. While moving forward with the reform process and opening the country to democratic processes, the government must manage the emergence of destabilizing social movements and spoilers so as to maintain order and stability in a careful manner that does not replicate the experiences of a recently-shed authoritarian past.

U.S. Institute of Peace’s Engagement in Burma/Myanmar

The United States Institute of Peace (USIP) is an independent, nonpartisan, federal institution established and funded by Congress. Its goals are to help prevent and resolve violent conflict; to promote post-conflict stability and development; and to increase peacebuilding capacity, tools, and intellectual capital. Based in Washington, DC, USIP operates in conflict-affected environments including Afghanistan, Libya, Nepal, Sudan, South Sudan, Iraq, and Yemen. Its project activities include mediating and facilitating dialogue among parties in conflict, building conflict management skills and capacity, and strengthening civil society and state-building.

⁴ Law Relating to Peaceful Assembly and Peaceful Procession, 2 December 2011.

USIP undertakes research, identifying best practices and developing peacebuilding tools. Its expertise includes religious peacebuilding, promotion of the rule of law in fragile states, civilian and military interaction in hostile environments, the role of formal and informal media in conflict environments, and gender dynamics in conflict. The Institute provides training on conflict management—including mediation and negotiation skills—to government and military personnel, civil society leaders, and the staff of non-governmental and international organizations. Finally, it supports policymakers at home and abroad by providing analyses, policy options, and advice to support non-violent options to address conflict.

Drawing on its areas of expertise, USIP began its engagement in Burma/Myanmar in 2011, partnering with Asia Society and the Blue Moon Fund, to provide advice and assistance on issues identified by local actors and organizations. Through this connection, USIP's Rule of Law Center of Innovation has worked since January 2012 with government officials, business people, religious representatives, civil society, and other actors, including the Myanmar Development Resource Institute (MDRI), a think tank providing assistance to the Myanmar government to develop policies to advance the transition process.

USIP's assistance has included facilitated consultations and dialogues, roundtables, technical materials and training around issues of rule of law reform, constitutional governance, inter-religious peacebuilding, and environmentally sustainable development. Throughout 2012, more than a dozen Myanmar government legal advisors and representatives of civil society attended courses and briefings at USIP and its Academy for International Conflict Management and Peacebuilding (the Academy) in Washington, DC.⁵ In September 2012, senior USIP rule of law staff members visited Burma/Myanmar to follow up on and expand relationships with Naypyitaw-based officials, including presidential legal advisors, the Attorney General, the Chief Justice and the Chief of the Myanmar Armed Police Force (the Police). Finally, USIP, working with its local partner Hope International Development, has offered peacebuilding training and ongoing programmatic support to Buddhist, Christian, and Muslim religious leaders and organizations engaged in peacebuilding and inter-communal reconciliation. This support has included exchanges with religious peacebuilders from other Asian conflict contexts, training in peacebuilding and encouragement and advice as religious leaders have responded to communal violence. Through these knowledge-sharing exchanges, USIP has developed strong relationships and begun to build trust with key rule of law reform actors across the spectrum of government, parliament, civil society, ethnic, and religious sectors and communities.

USIP recognizes the importance of a balanced engagement both vertically – with government and non-government actors – and horizontally, with different ethnic and

⁵ Courses included: Strengthening Capacity in a Reform Environment, Peacebuilding and Governance Program, Governance: Paths to Democratic Institution Building in Transition Environments, Developing a Framework for Economic Reconstruction in Conflict-affected States, Strategies for Trauma Awareness and Resilience, Social Reconstruction and Human Security, Mediating Violent Conflict, Advancing Security Sector Reform and Governance and Land, Property and Conflict.

religious groups and sectors. By engaging broadly, USIP is better able to foster inclusive participation in the creation and promotion of rule of law reform initiatives. This can simultaneously help in transforming existing conflicts and creating the kinds of inclusive systems and policies necessary for sustainable peace.

Purpose and Methodology

Building on the working relationships it developed in 2012, the USIP Rule of Law team (the USIP team) travelled to Burma/Myanmar from 9 February 2013 to 3 March 2013 to conduct several rule of law workshops and facilitated discussions designed to gather information from local actors about rule of law challenges, priorities, and proposed strategies to strengthen the reform process. The workshops were also used to share USIP's lessons learned about how best to promote rule of law reform in transitioning conflict countries in ways that can promote sustainable peace.

This trip was scheduled to coincide with the United States Government (USG) inter-agency rule of law mission so that USIP could continue its collaborative and supporting role played during the planning stages of the USG assessment mission, and to provide technical support as required. Prior to the trip, USIP had linked the USG team to USIP contacts in-country and had worked with the team in Washington, DC, in particular, by drawing on its experience supporting local justice and security sector development in transitional, conflict, and post-conflict contexts. While in-country, USIP traveled with the USG team to Shan State to compliment and synchronize findings from their meetings in Yangon and Naypyitaw. Separately, the USIP team travelled to Mon and Karen states and fed these findings and experiences into the work of the USG team. The USIP team coordinated a roundtable with representatives of ethnic groups in Yangon to gather the perspectives of multiple ethnic political parties (particularly those representing states the teams were unable to visit) concerning both general rule of law issues and those particular to their communities and states. The roundtable was attended by the USG team and was an opportunity to explore ethnic-related conflict issues and drivers. Overall, the USIP team maintained its independence throughout the trip but worked in parallel with, and provided support and input to, the USG team as needed.

The USIP team adopted a three-pronged approach to the rule of law trip: namely, to provide support to the USG inter-agency rule of law mission; to conduct a series of rule of law workshops in several ethnic states; and to participate in meetings with key rule of law stakeholders in various locations across the country. Follow up meetings were held with presidential legal advisors and officials from previous USIP visits, and USIP delivered requested materials such as books and other technical resources to the Supreme Court, Attorney General and Chief of Police in Naypyitaw. Formal meetings were held in Mon and Karen States with state government representatives and members of parliament, religious leaders from all faiths, political party representatives, members of the State-level judiciaries including the Chief Justices, the State Attorney Generals, and members of civil society including members of the business community, journalists and youth.

Through the provision of the rule of law workshops, roundtable discussions and meetings held in Yangon, Naypyitaw, and in Mon, Karen and Shan States, the USIP team was able to engage with a vast range of stakeholders in discussing the concepts of the rule of law, justice, security and peacebuilding; identify current rule of law challenges; discuss guiding principles and strategic approaches to rule of law reform; promote dialogue, relationship building, and trust among all sectors of society; and highlight the interconnectedness of all aspects of society - political, social, religious, ethnic, historical – in the promotion of the rule of law in a transitioning environment. The trip schedule can be found at Annex I.

The USIP team conducted three rule of law workshops in total – one two-day workshop in Mawlamyaing, Mon State (involving participants⁶ from both Mon and Karen States), and two one-day workshops held in Nyaung Shwe and Taunggyi in Shan State. The choice of location for the workshops was made primarily on the basis of accessibility and logistical considerations given the limited amount of time the team had in-country.

The overall objective of the workshops, which were titled ‘Promoting the Rule of Law in Transitioning States,’ was to bring together a range of rule of law stakeholders in order to provide an introduction to the essential concepts of the rule of law, justice, security and peacebuilding; guiding principles for the promotion of the rule of law; and the strategic skills necessary to put this knowledge into practice in their own transitioning state context. While it was initially intended that workshops be limited to approximately 30 participants each, ultimately the workshops averaged more than 60 participants. This was due to the high demand for the workshops by both government and non-government stakeholders. In fact, by the time the USIP team reached Shan State, news of the workshops had spread to such an extent that several additional participants travelled from Kayah and Chin States at their own expense. The total number of attendees at the final workshop exceeded 70 persons.

The USIP team determined that it was important to be completely transparent and to have as broad a cross-section of society as possible represented within the workshops. This allowed USIP to gain a more comprehensive understanding of rule of law challenges from multiple perspectives and helped ensure that USIP was not perceived as targeting or prioritizing certain groups: for example, only government or only civil society representatives (see the discussion below about the risk of international engagement creating new or enhancing existing divisions within society through such real or perceived prioritization). Indeed, at the first workshop held in Shan State, where the majority of participants were non-governmental actors, the first question the USIP team was asked in plenary discussion was whether USIP would also be conducting workshops for government actors (which it subsequently did the following day in Taunggyi, where there was a greater proportion of government participants present). The transparency of USIP’s approach assisted in breaking down barriers with the local authorities and was positively received.

⁶ The term ‘participant’ is used throughout the report to indicate those who either actively participated in any of the workshops, the ethnic roundtable, or other meetings and discussions held with USIP during the trip.

Workshop participants ultimately included State-level parliamentary representatives, local government officials, political party representatives, bar association members, university law school faculty staff, NGO and community-based organisation representatives, other civil society representatives,⁷ monks, local business people (including merchants, and traders), township administration officials, local UN representatives, lawyers, judges, students and youth leaders, media, farmers, retired citizens, artisans, medical technicians, traditional herbalists, and grade school teachers.

The workshops were designed to provide participants with an opportunity to develop their general rule of law knowledge and skills through small group and plenary activities focused on identifying current rule of law challenges at the local, state and Union levels, applying the rule of law principles and strategic approaches to some of those identified challenges, and working together to develop strategies of their own. These strategies were further enriched by the feeding in of various comparative ‘on-the-ground’ experiences and lessons learned that addressed both ‘top-down’ (state/institutional) and ‘bottom-up’ (grass-roots) initiatives from USIP experience in other countries. A summary of the specific challenges identified in each individual workshop can be found at Annex II.

Fundamentally, the USIP team saw the workshops as a tool for encouraging and initiating dialogue and relationship-building between individuals and groups from all sectors of society. As one participant in Shan State noted, she had never seen such a diverse mix of people from different sectors before in one room, much less discussing sensitive issues so openly. Another commented that a process of promoting unity and trust had been initiated through the USIP rule of law workshop. They emphasized the need for continued dialogue across the sectors and groups to foster a greater understanding of one another’s needs, perspectives and desires.

“We must meet among ourselves and work to discuss our country and our future. We should meet and discuss things and have many dialogues between us so we can understand each other and build our peaceful future.”⁸

Senior State officials and various workshop participants in all locations noted this was the first time they had been able to sit down with foreigners and openly discuss these issues. They commented that such events tend to occur mainly in Yangon, Naypyitaw and Mandalay, rather than in the ethnic states. The relationship-building and information-sharing was further enhanced by robust and in-depth discussions held during workshop lunches and group work exercises. The two-day workshop framework that included a shared dinner was particularly effective for developing deeper connections and allowing for more detailed discussions at the conclusion of the day. Several participants noted that

⁷ The term ‘civil society’ within the Burma/Myanmar context is defined more broadly than the generally accepted Western definition, to include community based organizations, township associations, faith based organizations, ethnic organizations, political organizations, youth groups, NGOs, unions, professional associations, media, arts and cultural associations, and some initiatives by the private-sector. This broad definition is therefore applicable in any further mention of the term ‘civil society’ in this report.

⁸ Quoting a member of the Shan State Peacebuilding Committee in Taunggyi, Shan State, 27 February 2013.

as a result of the workshop they had been able to create new connections between community-based organizations, political parties, and government representatives.

During the workshops and the location visits generally, the USIP team was asked many questions about the U.S. government, its history, how the country has dealt with issues such as race relations and migration, what challenges the country faced during its transition to independence from colonialism, how to balance national and human security concerns, and how democratic principles are taught to its children. There was also a great deal of interest in experiences from other transitioning states, including questions about separation of powers and the role of the judiciary.

General Observations

From the workshop discussions, roundtable discussions and other meetings, participants identified the following fundamental challenges to the promotion of the rule of law at all levels of society across the country:

- There is no common understanding of the meaning of the term ‘rule of law’;
- There is a disconnect between the perception of government officials’ and lawmakers’ regarding current rule of law needs and priorities and the experiences and views of the local populace;
- There is a deep-rooted lack of trust and perceived and/or actual lack of respect between groups and social sectors that inhibit strategic collaboration to promote the rule of law, including between people and the government (including security forces), among ethnic and religious groups, and even within these groups/sectors.
- Entrenched corruption is a major challenge to the promotion of and respect for the rule of law;
- Institutional and systemic barriers threaten to impede government progress in implementing rule of law reforms;
- There is a perception that laws are not applied equally to all and that current law-making processes do not provide for any meaningful level of public participation;
- Support is needed to ensure a strategic approach is taken to rule of law reform that includes, for example, identifying needs, prioritization and sequencing, and participation of a broad array of stakeholders;
- Communities lack knowledge of basic laws, legal procedures and mechanisms for accessing their rights; and
- Civil society organizations (CSOs) and religious leaders may be able to play a greater role in empowering communities to engage in rule of law reform.

Defining the 'rule of law'

The term the 'rule of law' and its importance to the transition period were referenced repeatedly by stakeholders at all levels of government and within civil society during the USIP trip. This was coupled with a genuine enthusiasm to understand and better support and engage in the rule of law reform process.

While explaining that there is a multiplicity of definitions and understandings of the concept, USIP introduced participants to the term from the perspective of the international assistance community, specifically, the definition agreed to by UN member states in 2004:⁹

"The rule of law ... refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

Using this definition as a starting point for discussions allowed participants to ground their own understandings of the rule of law in a common definition that could be referenced throughout the workshops.

Particular attention was given to deconstructing the concept of the rule of law as involving both rights and responsibilities, and considerable discussion focused on the challenge of balancing both security and justice interests in achieving rule of law. One workshop exercise asked participants to identify all the different actors involved in the provision of justice and security and the promotion of the rule of law at a community and national level, revealing that the list of actors is very long and importantly includes the public as well as a multitude of state and non-state actors. The actors identified by participants in each workshop are contained in Annex III.

Throughout the workshops, USIP emphasized that the rule of law protects and promotes the rights and responsibilities of both government and the people. The rule of law therefore can only be achieved when each person honors those rights and responsibilities. When one party, the government or its people, for example, do not honor their role in the maintenance of the rule of law, it creates an imbalance that can result in chaos, conflict and

⁹ See the Report of the UN Secretary-General, 'The rule of law and transitional justice in conflict and post-conflict societies,' (S/2004/616), 23 August 2004, [6].

insecurity. Finding the balance between ensuring security (both national and human) and providing justice is a challenge in all countries and takes time.¹⁰

Ultimately, presentations emphasized that the rule of law begins with each individual, no matter what their position or identity, radiating out into the community, and ultimately the nation. Moreover, the rule of law does not only follow after peace and stability is attained, but is a requirement for achieving such peace. Thus it requires respect for one another and recognition that each individual's rights and responsibilities are tightly interwoven with the next person's rights and responsibilities.

Each workshop began with the facilitator posing the question, "what does the term, 'the rule of law' mean to you?":

Mawlamyaing: safety and security; equality, justice, freedom; that everybody abides by the law (citizens and government); that people are economically, politically and socially safe and secure; that people can live with dignity if everyone lives by the laws and rules; it creates the ground for government, social and economic development; it is necessary for democracy; that everyone should abide by the laws and if those laws are violated, that a person is punished by law enforcement authorities; it means the responsibility towards the law and that everyone is equal before the law.

Nyaung Shwe: "we want you to tell us!"; no one should be above the law, everyone should be equal before the law, the law should be made by Parliament and all branches of government should govern in accordance with that law, laws should be collectively agreed, fair and fairly applied.

Taunggyi: that everyone knows and respects the law and is treated equally before the law; includes respect for human rights and the principle of fairness; requires public participation – all people need to understand the Constitution and the laws and rights should be accessible to all; the law should protect people but people should also understand their responsibilities under the law; laws should be drafted by the people and implemented for the people and should be done with participation of both the government and people.

Relationship between government and the general population

In general, stakeholders appeared to accept that President Thein Sein and other reformers in the government, including Aung San Suu Kyi, are genuinely attempting to bring about reform. They pointed to greater space for political mobilization and a growing sense of

¹⁰ Several participants noted that human security has been given little attention in the country's past and even the policies of engagement with Burma/Myanmar by other states (China and the USA) have derived solely from their national security interests.

personal security and freedom. They also recognized the reform process itself, as well as the results of these reforms, will take time to come to fruition. In the Taunggyi workshop participants noted that the current context is historically conditioned, shaped by events that have been taking place since the 1960s. The new government may indeed want change, but old habits, norms, and institutions cannot be changed overnight.

Participants warned, however, that the population would only remain patient if they saw evidence that steps were being taken in the right direction to improve the general situation for the entire population. An NLD representative in Mon State stated that the government had been forced to make some superficial reforms due to public pressure but there has been no deeper reform and there is still a lack of a clear vision for national rule of law reform.

Addressing the deep disconnect between top-level (government) decision-makers and the population was viewed as a top priority in all locations. Reasons for the disconnect were identified as resulting from:

- A lack of capacity at the top-level to effectively communicate new policies to the local populace;
- Resistance to engagement with the public by those fearful of losing their political or economic power;
- A lack of trust and respect across all sectors in the reform efforts;
- A lack of transparency in decision-making - participants were divided on whether this results from lack of government capacity and mechanisms to report decision-making or from intentional obfuscation;
- Members of parliament who fail to or are unwilling to listen to and convey the messages of their constituents to the higher levels;
- The existence of old habits and mind-sets that have been in place for decades and will take time to change;
- The lack of awareness of the general population about the law, political processes and their role in the political process;
- The existence of bribery and corruption;
- A lack of understanding or a lack of interest by the authorities about what is really happening at the grassroots level; and
- A lack of existing mechanisms and institutionalized avenues for engagement between civil society, local communities, and government decision-makers.

Several civil society representatives in Yangon and elsewhere expressed skepticism about the genuineness of the government's reform process, stating that while the government has made some changes, indicating a move towards greater democracy, in practice this has amounted merely to a change in strategy and tactics rather than a fundamental change in

vision, and it has resulted in little meaningful change on the ground. They raised concerns that some of the freedoms recently granted could be taken back at any time. They also described what they saw as a “containment strategy” by the government, whereby high profile civil society activists are appointed to official positions, such as on commissions, as a means to ‘control and contain’ these activists. Some wondered if the reforms were really just about opening the country enough to allow for business investments that would benefit some, but not all, while leaving the core existing system intact.

One example of this disconnect is the different explanations offered by government and non-government representatives for the low number of court cases in one state. A state official informed the USIP team that the low number of cases in his district was an indicator of low levels of crime. However, in the same location, civil society representatives noted various barriers to accessing the formal justice system including a deep distrust by citizens of the police, corruption within the police and the court system, financial costs, lengthy proceedings, delays and backlogs, and language barriers. Moreover, a lack of legal education on the part of the people restricts their ability to advocate for their rights and the related responsibilities of government.

Another example can be found in the recent local elections. Several stakeholders noted that all international attention is focused on the 2015 elections and little attention has been given to local level administrative elections. At the village level, people desire to have local representatives whom they trust to understand their views, concerns and desires, and to convey them to higher levels of government. In other words, local populations seek representatives who provide an avenue for greater public participation in the political process. Without establishing this level of trust at a local level, there can be no sustainable or genuine trust in the work being carried out at the Union level.

Participants portrayed the recent local election process as being fraught with challenges. In Mawlamyaing, civil society representatives noted that people were given the opportunity to vote, but without being informed about the substance of the new law, the process, or the ramifications of their decisions. The procedures and policies surrounding the election and appointment of village administrators were underdeveloped and/or unclear to people at the village level. In a number of cases where the government rejected the community-elected representative, there was confusion as to why, and a number of appeals were underway. According to those USIP met with, not only has this frustrated communities who have begun to lose faith in the election process and, by extension, the government, but it also placed the government under increased pressure to meet declared deadlines for having village administrators trained and in their official positions by the beginning of April 2013.

Despite these challenges, there was a general feeling from all stakeholders that there have been tangible improvements in the area of rule of law reform. At a community level, people commented on the ability to associate more freely and to speak more openly, including at events such as the USIP workshops, which most participants agreed would never have been allowed to happen two years ago. Civil society representatives commented on the opening of space in which they can work and organize, including for political advocacy (see the

section on the role of civil society, below). Political party representatives reported increased freedom of the media and a marked decline in censorship restrictions, which provide individuals, communities, and organizations not only with much wider sources of reliable information, but also with additional avenues for raising issues and concerns about actions by the authorities and for demanding accountability.

Taunggyi workshop participant suggestions for strategies to address the disconnect between government and the people:

- Constitutional change – some participants expressed a view that as long as the current Constitution is in place, nothing will change;
- Free and fair elections – particularly at the state level, requiring the election of a state leader that people will trust and who acts for the good of the people;
- Clarification of the role of the military - 25% of Union parliamentarians are appointed military officers. The military must treat people with respect. This will improve relations between the people and the military. They should be responsible for security and protection. That is the only appropriate role for the military;
- Networking – the need to create networks, bring people together and allow all voices to be heard. This will promote national unity and help to build trust;
- Support must be given to ending the conflicts that are currently underway and to ensuring genuine and lasting ceasefire agreements;
- Decentralization must take place and all ethnic groups should be represented in parliament. The long-term aim must be for full political participation;
- Strengthened linkages between the central government and local authorities, civil society and the media, as well as recognition of how each party can support and be of benefit to the other;
- There should be a focus on improving the education, political and economic situation.

Key stakeholders include:

- The “cronies” and government authorities
- The governor and the people who are being governed
- Law makers
- Military
- Police
- Rebels
- Foreign investment bodies
- Media

Relationship between the military, law enforcement bodies, and the general population

Despite some positive developments, civil society representatives and other community members reiterated that there is a continuing fear and mistrust at the village level relating to the perceived and actual impunity of the police, the military, and local authorities in general.

People do not have confidence that the police will help to resolve their problems or investigate complaints fairly. They perceive a pervasive culture of corruption within the Police. One civil society representative mentioned that the Union-level Chief of Police issued an order in late 2012 that the police must change their behavior within two years, noting that perhaps change may be coming in the future. Indeed, at the Union level, USIP has had a positive engagement with the Chief of Police and his staff, who have shown a sincere interest in engaging on issues of police reform, requesting material and case studies laying out democratic policing approaches. Substantive reform in a country transitioning from authoritarian rule requires this high-level support in order for changes to permeate down to the lower ranks.

The USIP team was told that the population's fear of the military stems from a long history of abuse and trauma, including forced labor. Locals in conflict areas worry about landmines and remain afraid of military patrols, despite the decline in practices such as forced labor since peace negotiations began between armed groups and the new government.

Generally, however, participants felt there had as yet been little change in the behavior of police officers at the local level and expressed a belief that there remained little recourse to justice for victims of violations conducted by the military.

Corruption

Without exception, all the stakeholders with whom the USIP team engaged cited corruption as the country's most serious obstacle to the rule of law. Corruption is deeply rooted and pervades every sector and all levels of society from the top level to the grassroots level. Corrupt practices, the offering of bribes or incentives, are regarded as intrinsic to the fabric of social life and national psyche. Not only is it generally accepted that you must pay 'extra' for any government service, but there is personal concern about 'losing face' if a bribe or incentive is not offered.

Workshop participants identified the following drivers of corruption:

- Low government staff salaries, contributing to lack of motivation and professionalism;
- Complicated and lengthy bureaucratic processes;
- The desire of government staff for personal and job security and for promotion within the system;
- Misuse of the cultural tradition of paying respect to older or higher ranked persons;
- Failure of the government to provide basic services – education, health care etc.;
- Personal greed;
- The disconnect between the government and the people;
- Disregard for the law - government officials have worked for decades under 'direction' rather than in accordance with the law;
- Weak governance;
- Lack of awareness of the general population about what they actually need to pay, i.e.: the official fee structure to lodge a case in court. People just keep paying more money in the hope that action will be taken to address their issue;
- Cross-border immigration and border trade.

Participants noted that corruption involves not only government officials, but also the private sector and the general public. Addressing corruption requires changing the mind-set of an entire population – those who give and those who receive bribes and other incentives. As one participant noted, the country must reach a point where even the corrupt official who accepts a bribe or incentive that is offered to him, and who says it is permissible because he did not ask for it, will change his behavior out of fear of being investigated.

With specific reference to rule of law actors, bribery and corrupt practices within the police and the judiciary were seen as major barriers to individuals accessing justice. The judiciary has a long history of interference by the executive branch, which continues today. Judges are accustomed to waiting for administrative instructions before deciding cases, and as one participant pointed out, may not have the capacity to make independent decisions. Another problem judges face is uncertainty about the direction the government is heading. While the government speaks of change, there has been little evidence of real, institutionalized, change on the ground. Judges worry that if they change their practices now, next week they may be told that was the wrong thing to do. Further, the judiciary has been regarded as a tool of oppression since colonial times and is generally held in low esteem by the population. It is viewed as being highly corrupt, with several participants noting that it is commonly accepted that only those who can afford to pay the judge can hope to win a case.

There is currently no independent judicial appointment process and no functioning internal accountability mechanisms. Being a member of the judiciary is not a highly regarded or sought after position, as was emphasized by some participants who stated as evidence the relatively high percentage of women judges.

Workshop participants made the following suggestions for strategies to address corruption:

- The establishment of a social welfare system;
- Increased government salaries (to ASEAN recommended levels) and benefits;
- Training of government staff;
- Enforcement of existing anti-corruption laws i.e.: adequate investigation by police and prosecution by the judiciary of those involved in corrupt practices;
- Use of media and social media to raise the issue of corruption, identify corrupt officials (name and shame) and educate all people about why corruption is wrong;
- Provision of adequate financial and human resources to allow the police to investigate corruption claims;
- Religious and moral development programs to develop new mindsets and social norms against corruption.

Participants emphasized that successful initiatives to address corruption must be nationally driven, that is they must come from the people who best understand the local context, the legal culture and how and why certain practices have been established and accepted. USIP considers that there is a real need for much deeper discussion around this issue both within and between civil society and government, supported where necessary by international actors, to ensure that reforms are designed and implemented in a manner that consider and addresses the root causes of corruption within society.

Institutional and systemic challenges

Workshop and meeting discussions reflected a common perception that, while the President and other reformers appear committed to pursuing genuine rule of law reform, many within and outside government continue to be reluctant to engage in or support the change process. Moreover, there are many individuals and groups with vested interests in maintaining the former political and economic order, and who could severely hinder the country's progress towards change.

A major barrier to addressing and overcoming this challenge are the institutional and systemic weaknesses hampering the government's ability to manage the reform process. Even at the highest level of government the internal division of authority is ill-defined and it is not clear who will provide overall direction and leadership for rule of law reforms.

There is currently no Ministry of Justice and no effective focal point for overseeing rule of law reform efforts by the executive branch. While the Rule of Law and Tranquility Parliamentary Committee can receive public complaints, monitor, and help implement the rule of law reforms, Naypyitaw-based officials insist that executive branch officials must also have an understanding of and take responsibility for promoting rule of law reform within an articulated long-term national plan of action.

Although the Attorney General has been identified by the President as the focal point for rule of law reform (as confirmed by senior officials in Naypyitaw), the Attorney General's office lacks both the authority and resources to undertake full responsibility for this work. The Attorney General does not have purview over the court system, which is the responsibility of the Chief Justice of the Supreme Court, nor the Parliament, which has its own Rule of Law and Tranquility Committee. These unresolved authority/power issues hinder substantive progress on rule of law reforms.

At the same time resistance or reluctance to engage in reform is said to be coming from the Chief Justice, ministers, directors general and the state level authorities. In many cases this resistance derives from the historical military context where security and national stability were prioritized over rule of law and justice. Security is still of particular concern to many in government who see various internal and external threats to national security and stability and who are of the view that any progression towards democracy can only occur if there is first stability (i.e.: national security). The continuing Kachin conflict and the recent Muslim/Buddhist clashes in the Rakhine State, the center of the country and northern Shan State serve to illustrate the delicate balance between reform and stability priorities.

The institutional systems and structures necessary to address many of the new demands of a freer, more democratic environment are lacking. Business people, local communities, civil society groups, and student unions all spoke of their frustration with the absence of clear channels for engaging with government or procedures to follow for requesting information, raising concerns or seeking government permission for activities. Even where laws existed, clear rules, regulations and procedures were not in place to allow for those laws to be implemented in practice. As one religious leader noted, in all areas of life nothing is done 'by the book' - everything is based on verbal orders coming from above.

But many with whom USIP met warned against taking a knee jerk reaction to filling perceived system gaps. The creation of new institutions, committees, procedures, or laws to address perceived gaps may not always be necessary. In many cases the appropriate laws or mechanisms may actually be in place but are either not known or are not applied and empowered (whether due to lack of capacity or willingness). Several participants offered corruption as an example, noting that laws and anti-corruption mechanisms already exist and so the creation of new laws and mechanisms would be redundant. Creating parallel structures or systems rather than examining, adapting, or empowering existing ones could in fact result in further chaos.

Legislation and the law-making process

In all locations, participants raised concerns about the status of current legislation and the law-making process.

From a community perspective, there is a strong feeling that laws are not applied equally and that those in power hold themselves above the law, many laws exist solely to protect the administrative level and the decision makers, and that the powerful use laws to serve their own ends. In addition, many of the laws are drafted in 19th century English, including the *Myanmar Penal Code of 1860 (India Act XLV)*, and cannot be easily understood even by trained legal professionals; or the laws are in the Burmese language, which disadvantages ethnic groups whose primary language is not Burmese. Many laws are viewed to be outdated and not responsive to the population's actual needs, and laws do not take into consideration relevant traditions and customs, or they restrict custom and tradition.

However, government officials acknowledged a lack of technical expertise and resource capacity at the Union government level to undertake the necessary comprehensive review of existing legislation, and the subsequent legislative drafting.

With respect to the Union level, communities, state officials and Union officials all agreed that a review of existing legislation is needed. Strategic reform and repeal may be necessary, such as when laws are outdated or in conflict with the 2008 Constitution. New laws should be drafted to address gaps identified through the review. Crucial legislative and law reform changes identified by participants included:

- Laws that favor the previous regimes and cronies should be abolished;
- Repealing of laws that do not benefit or protect all people, and that do not reflect the reality of the current context;
- Laws meant to protect the people, e.g.: the Constitution, should be amended to achieve their true purpose;
- New laws should be made to protect the natural environment (particularly noted in Shan State).

Participants at all levels repeatedly called for amendments to the 2008 Constitution as a necessary component to genuine progress on the transition. In particular, participants raised concerns about:

- Ethnic rights;
- The relationship between the states and the Union (decentralization);
- The role of the military;
- The relationship between the executive, legislative and judiciary branches (separation of powers).

At the state level, officials noted they lack experience in legislative drafting but felt that legislative review and drafting was crucial to moving forward in the reform process. For example, in the last two years the Mon State government has drafted ten new laws, with six drafts being presented to Parliament in the March 2013 session. These laws relate to the budget, local planning, forestry law and performance theatre and culture. The state government is currently trying to review the laws and repeal duplicate or out of date laws, particularly those from the British colonial period that are now deemed to be irrelevant.

However, state level officials emphasized there is confusion in the Constitution regarding the devolution of power on the issue of law-making. As state authorities try to proceed in their role of drafting and passing state laws, practical challenges have arisen such as police officers not enforcing state-made laws because they are accustomed to taking their orders from the top level (i.e.: from Naypyitaw) and do not recognize the legitimacy of state-level legislation.

Many raised concerns about the law-making process at the Union level, which is not transparent and does not allow for meaningful public participation. It is seen as unresponsive to the actual needs of the population. In Shan State, a workshop working group noted that a “good” law is the result of dialogue and compromise between the government and the people and that the government must act (and be perceived the act) in the best interests of its people, free from partiality, bribery and racial and religious favoritism.

It was generally felt that the national government does not have the expertise to conduct a strategic law-making process that meets the demands for transparency and increased participation. At the same time, local populations lack knowledge about how to actively involve themselves in law-making processes.

A strategic approach to rule of law reform

Since 2010, the government has embarked on a range of rule of law reform initiatives. It now faces the precarious task of balancing the need for immediate changes that bring tangible results on-the-ground in order to build confidence in the reform process, with the need to make sound and sustainable reform decisions reached through intensive consultative processes with a variety of stakeholders. Simultaneously the government must maintain stability, handling old and new forms of violent conflict effectively, and move forward with political dialogues with ethnic armed groups that address their grievances.

As was discussed in the workshops, such a task requires a clear strategy with a holistic vision and achievable short, mid and long-term goals, realistic timeframes, in-built accountability mechanisms and clear assignment of responsibilities for implementation. The strategy must be based on the actual needs and capacity of the organizations and institutions engaging in rule of law reform and the identified priorities both at a government and community level. Ultimately, this strategy should provide a platform from

which the government can make informed requests for targeted international support and assistance that will have the patience to promote a complex reform process requiring the navigating of multiple conflict dynamics.

In all locations, stakeholders recognized the lack of awareness at all levels of society, from the Union government level to the community level, about how to develop reform initiatives in a strategic manner, how to convey those priorities to and accept assistance from the international community, and how to actually implement reform programs. USIP highlighted that effective reform requires building trust and confidence in the system and the reforms by addressing not only rule of law challenges but also the historical drivers of current conflicts. This requires bringing together the various stakeholders from different levels (i.e. engaging vertically across society) – from parliamentarians, to the provincial and local levels of governance, to service providers, CSOs, and neighborhood groups and individuals – as well as horizontally across society, bringing together different religious and ethnic groups and sectors, so that their differing needs can be addressed, even as it is acknowledged that they may not always be reconcilable. There is a demand for collaborative and participatory consultations on the reform process and a need for greater public understanding of and support for the reform process.

Community legal awareness and access to justice

A fundamental issue raised in all locations by all participants was the generally poor level of education and the lack of legal awareness of the majority of the population, which prevents them from engaging more actively with the legal justice sector and in the reform process.

While various participants pointed to the lack of education among government officials, judicial staff, legal professionals and the police about their rights and responsibilities under the law, it was also agreed that at a community level there are no existing mechanisms to provide education about the rule of law, the law, legal rights and responsibilities, or an understanding of the mechanisms available for realizing those rights.

Particularly in rural areas, people do not see the law as relevant or of any benefit to their daily lives where the priority concerns are economic survival i.e.: being able to support their families, educate their children and repay loans etc. In Mon State, officials noted that the average citizen has very little interest in the law and most people do not think the rule of law exists. There is less concern with who wins the elections and more for whether life will improve. For some, the law is seen as a tool of oppression and is feared. Even where there is talk about the need for rule of law and law reform, most people still believe this means rule by law, and do not fully understand the range of elements and role of numerous actors necessary for the rule of law to exist in a society.

People know very little about the legal system, the content of the laws and the legal procedures for taking a complaint. They do not know the consequences of breaking laws (in addition to weaknesses in law enforcement) and some participants felt legal awareness

raising should particularly target the youth who become involved in illegal activities such as consumption and selling of drugs, without understanding the legal consequences.

Civil society representatives from Mon and Karen States discussed the need for greater legal knowledge and education of the population, particularly in the more remote areas where there is a higher level of illiteracy and less access to information. However, education and awareness raising activities need to be adapted to suit the local context and the particular needs of each audience. Access to reliable internet, for example, is extremely limited in urban centers and even more so in outlying ethnic areas. Men may engage in political discussions at the local teashop but women, who are mainly at home managing the house, tend not to be engaged in these discussions or play a public role in formal community decision making (although they may be involved in, and even lead, various community social programs).¹¹ In Nyaung Shwe, Shan State, participants commented that the law does not adequately provide for the security and needs of women. Further, the majority of the women are housewives who do not have any knowledge about the rule of law.

People in rural areas are still suffering the consequences of the previous regime. Many people that USIP met, particularly those living in recently active conflict zones, noted the persistence of fear at a local level. People are afraid of the police, military, ethnic armed actors, and village and administrative leaders who have previously ruled in an authoritarian manner and often abused their powers. They fear future backlash for things said and done within the current opening afforded by the reform, should the reform backslide. They are unaware of how to engage with the government. According to some participants, if people knew the law, they could use it to protect themselves and could also promote the rule of law. Understanding the rules and regulations that apply at the village and township levels would also assist in achieving peace and tranquility in the area.

Mon civil society representatives pointed to the gradual improvements in the past two years bringing increased freedom of movement, freedom of association and less state interference with civil society activities, as examples. At a village level, communities have become more empowered to demonstrate against village leaders and have them removed. NLD representatives noted that there is more of an opening for accountable governance nowadays; if the government acts against the interests of the people, people can and will use the media and political parties to draw attention to an issue. However this is still a very new phenomenon and the government has not yet been adequately responsive to it.

The government has also been taking a role in assisting local populations to meet longstanding needs. For example, recent initiatives have facilitated the provision of national identity cards to people in rural areas. These cards are necessary for domestic

¹¹ There are many women involved in social activities at the community level, often through religious institutional programs that respond to community health and education needs, and sometimes, particularly for younger women, in civil society movements and organizations. Women are very involved in civil society in Yangon, serving as leaders of organizations. Women's participation in community decision-making varies between ethnic groups, but in general women play a much more limited role in public decision-making at all levels of society than men.

travel, obtaining a passport, enrolling in school, registering to vote etc. In the past, officials would demand a large amount of money for issuing the cards, meaning that many poor could not afford them. The government has now greatly reduced the cost of identity cards in Karen State, although this has not yet been implemented in Mon State.

Despite these rays of light in some areas, the issue of identity cards remains fraught for certain populations, complicated by both ethnic and religious prejudices. Muslims noted that it can be a challenge to meet the stringent demands for proof of ancestral lineage in the country in order to receive identity cards. A civil society representative noted that in female-headed households, a child over 20 years could be refused an identity card on the basis that only one of the parents is Burmese. The identity card issue is problematic in ethnic areas linked to conflict. For example, in Karen State, USIP was told the government refused to issue identity cards in certain conflict areas as a means of preventing Karen insurgents from traveling.

A number of barriers to accessing justice were identified in the workshops and other meetings:

- People are fearful and face intimidation if they try and take action through the formal justice system;
- Witnesses fear testifying, as they do not know what consequences there could be from the authorities or other powerful persons;
- Access to the courts is costly due to lawyers' fees, high administration costs, and bribes or incentives that must be paid to judicial staff;
- Lack of consumer protection – people have no recourse to justice if they are sold faulty products or are cheated by merchants etc;
- In remote areas armed groups unlawfully extort money from citizens with impunity;
- Armed groups establish their own courts and adjudicate cases without any accountability;
- Armed groups are able to undertake criminal activities with impunity because the government is concerned that if it takes action against the armed group it will be accused of renegeing on the peace process, and/or will set back the peace process;
- Weak law enforcement in border areas by the government means that whichever group/person administers the area is able to act arbitrarily and in their own interest.

For many communities, a key barrier to the implementation of the rule of law has been the lack of mechanisms for holding institutions and individuals at all levels accountable for their actions or for fulfilling their responsibilities – from the executive, parliament and the judiciary, to the police and military, down to local-level decision-makers. Communities feel they have limited opportunity to be heard by the government and when they are given the chance to articulate their concerns, nothing is done subsequently to address them. The key issues of concern identified by local communities included land rights, land reform, natural resource protection, access to services and livelihood opportunities. Criminal justice issues

were not commonly identified during any of the discussions and were not identified as a major driver of instability, at least compared to other issues.

Muslim communities raised the issue of citizenship. As noted above, many Muslims of mixed heritage have difficulties obtaining the necessary documents to prove their ancestry and therefore to obtain citizenship, despite, in many cases, having lived in the country for generations. Muslims, particularly in Mon State, expressed concern about escalating anti-Muslim attitudes and organized activity, including groups such as the 969 Movement, led by Buddhist monks, which seeks to marginalize Muslim-owned businesses. In Mawlamyaing, the Muslim community said when they felt immediately threatened they were able to address grievances through the State Chief Minister (who opened a hotline for them to call in the case of threats against them) or through existing relationships with Buddhist monks and other community leaders. Muslim communities in Shan State said they were encountering less oversight and suspicion by local security officials and generally felt their freedom of movement and worship had improved, though they still encountered some difficulties with legal issues related to property.

Workshop participants suggested a variety of strategies for addressing the lack of legal awareness within the population:

- The legislature should undertake outreach to the population to explain its role and the laws it has passed. The executive branch and all its departments, including the land department and police, have the same obligation to inform the public about relevant laws;
- When a law is passed, both government and private media should publish the new law;
- Internet, radio, or satellite television broadcasting of parliamentary sessions would help to distribute information and increase transparency;
- The government should be transparent about its budgetary allocations to departments and ministries;
- The government must increase the knowledge and capacity of government officials;
- The Ministry of Information should provide adequate information to the media (television, radio and newspapers);
- The Ministry of Education should include basic knowledge of the legal system and laws in high school curricula;
- Civil society organizations (CSOs) should provide training for people on the laws, their rights, including the right to participate in the legislative process, and the processes they need to navigate in order to realize those rights;
- CSOs should be given the operational space to carry out activities and training to promote legal awareness. A persistent climate of fear still leaves many wary of the repercussions from government if they engage in activities such as raising legal awareness. Expanded legal space and protection for civil society is necessary to carry out this work;
- Members of Parliament would benefit from capacity building to help them perform their role more effectively, to better engage with constituents and to better understand community level problems.

A Mon workshop participant suggested that young lawyers could be trained and supported to deliver legal awareness training in remote locations. This activity would have a gradual flow-on effect as more people became aware of the rights, responsibilities and legal procedures available to them.

The role of civil society

All participants recognized that civil society can play an important role in representing the needs of communities, supporting community participation in the reform process, and supporting the government in undertaking reform activities. However, to achieve this, civil society needs help to build capacity on issues of democratic governance and rule of law, as well as community-specific issues such as extractive industry, land rights, and environmental law.

Relationships between civil society and the authorities cover a vast spectrum, ranging from no contact at all to frequent interaction. The new political climate has provided CSOs with increased operating space and new opportunities to engage the government at different levels on various issues. However, it was also noted that civil society as a whole still has relatively limited influence with government and there continues to be a wide gap between civil society and government interests.

In general, civil society representatives expressed a willingness and desire to have greater engagement with the government and to be recognized as partners in developing and sustaining rule of law and democratic governance, rather than being perceived as being in opposition to government. Some civil society representatives at the state level commented on the increased space in which they can now work. While government authorities still monitor civil society activities, being transparent, cooperating and keeping the authorities informed at the state and township levels about planned activities have tended to reduce resistance. Others noted that this type of engagement improved state officials' understanding about the work of civil society, demonstrating that civil society can be an asset rather than a threat to the authorities and can complement the role of the government, thereby helping to build trust and mutual understanding.¹² Other smaller local organizations that remain reluctant to engage directly with the authorities are able to explain their work to local political party representatives who can then communicate with higher authorities on their behalf.

At the local level, most CSOs consist of relatively small non-governmental organizations (NGOs), community-based organizations (CBOs), and self-help groups who have access to some of the most remote areas of the country and many of whom have existed for decades. These organizations tend to focus on charitable work, delivery of basic services for health,

¹² See also, Transnational Institute and Burma Center Netherlands, 'Civil Society Gaining Ground - Opportunities for Change and Development in Burma,' November 2011, at www.tni.org/report/civil-society-gaining-ground.

education, sanitation, community development, social welfare, environmental protection and more recently, women's rights and gender concerns. Some operate in affiliation with religious institutions, such as monasteries and churches.

Recently some of the more established CSOs (mainly those headquartered in Yangon) have launched projects to raise awareness about legal rights and provide legal aid on a limited scale. These include the Shalom Foundation, the NLD (providing limited legal aid), and the Myanmar Legal Aid Network. The Shalom Foundation, for example, has provided assistance with land registration, training for citizens on political activism and engagement, the constitution and other laws and navigating the court system, and it has prepared plain language documents explaining fundamental laws. Some of these organizations have actively sought to engage the government, involving themselves in legislative reform work and advocacy activities,¹³ while others have maintained a distance from government engagement, distrustful and cautious about the direction the government will take in the future. Others have hesitated to engage with government because they simply do not know how to do so effectively.

Civil society has not been immune from the deep divisions and mistrust caused by decades of conflict and military rule. Several NGO representatives indicated that cooperation and coordination between organizations are a real challenge especially for those based in Yangon. Many CSOs have independently undertaken initiatives, failing to share knowledge and experience or to cooperate in achieving shared goals. Some networks and coalitions are now forming across the country, but greater support would be helpful to stimulate networking, cooperation and coordination between CSOs, international organizations, and the government. At a minimum, the international assistance community must take measures not to deepen competition between local organizations.

Despite recognition of an opening for CSOs to work and to engage with the authorities, this was tempered by comments from some civil society representatives of continued, though now more strategic and selective, harassment of activists. As an example, prosecutors have lodged minor offenses against one activist requiring repeated court appearances. This is perceived as an attempt purely to make their continued activism difficult.

Civil society representatives requested more assistance with capacity building for management and staff to enable them to define their own priorities and those of the communities they serve, and subsequently to seek grants and manage projects, undertake reporting and manage finances. Some INGOs are now providing support for capacity development of CSOs such as in small grant management, financial management, etc., and are helping to bring CSOs together around certain issues and provide guidance on how to cooperate, coordinate, advocate and engage with government, INGOs and donors.

¹³ For example, the Local Resources Centre (LRC) in Yangon, has been approached by the government to review and advise on revisions to the Associational Law.

Community level problem solving and decision-making

Feedback received during the workshops and roundtable discussions with civil society representatives revealed that at the local level, people are generally afraid to approach the police or the courts to solve their problems. They do not trust these institutions, perceiving them as corrupt and unfair.

Problems tend to be solved at a family, village or township level wherever possible. Although the village leader has an obligation to inform the police about serious crimes, smaller issues and petty crimes can be settled by the village leader and/or the elders' council, a small group of respected men within a village. As mentioned earlier, women generally do not hold decision-making roles at this level.¹⁴ If one party to the problem does not agree with the solution reached, they can take the matter to the township level. This is rarely done, however, because it is seen as being too expensive (administrative legal costs and bribes). In conflict areas, the issue would be taken to the head of the controlling armed group. The Buddhist monkhood (sangha) has its own internal mechanisms for dealing with conflict and adjudicating internal disputes (for example land and property conflicts related to monasteries).

The newly passed *Ward and Village Tract Administration Law* not only enables citizens to elect their own local leaders but also purportedly requires that the elected leader form a committee with the authority to make legally binding decisions in certain cases, such as minor criminal cases. The procedures for forming these committees have yet to be set and it is unclear what effect this will have on existing power structures at a village level and what tangible effects there will be on daily life. In addition, some Shan State workshop participants felt that it was becoming more difficult to resolve problems at a community level with traditional respected elders and the village leader as the primary decision makers. Communities are now told to address their problems through official channels at the township level, which is considered neither an appropriate, efficient nor relevant mechanisms for most community members.

Decision-making at the local level tends to be based on custom, generally depending on the decision-maker and their level of education. Customary or traditional law tends to vary among ethnic groups, although much of the core law is consistent. Armed groups also apply their own laws in the areas they control. USIP observed that while these traditions and customs are 'the law' at the regional and community level, they may not always be in line with domestic or international law.

Some civil society representatives noted that gender roles at the village level are also changing. Due to the economic situation, more women are seeking higher education in order to increase their skills and knowledge and improve their opportunities to obtain work. With more men traveling abroad to seek better work opportunities, women adopt greater leadership roles. Some CSOs have begun to undertake leadership training for

¹⁴ See also, 'Village Institutions and Leadership in Myanmar: A View from Below,' a report for UNDP by MDR and Susanne Kempel, 2012.

women at the village level in order to increase their participation in decision-making. It was noted, however, that men also would benefit from leadership and decision making skills building.

Role of religious leaders

Religious leaders and institutions play an important role throughout the country. Participants in our workshops and meetings often identified religious leaders as key actors in promoting the rule of law. During military rule, religious institutions often addressed community needs, particularly related to health and education. Buddhist monks and nuns drew attention to community grievances and have been engaged in political and social activism, most notably during the Saffron Revolution. Religious leaders, particularly Buddhist and Christian, have also been involved in past peace processes between the government and ethnic armed groups, either as direct facilitators or as observers and supporters. Traditionally, however, religious leaders have not had an official governance role in communities or in Union level government, and there is a general aversion to having clergy play roles considered “too” political.

There is a deep and complex relationship between Buddhism, the majority religion in the country and the primary religion of the Burman ethnic group, and political structure, discourse and national identity. The place of ‘primacy’ allocated to the Buddhist religion has caused grievances among non-Buddhist religious groups who are treated as automatically suspect and confronted with certain legal and political challenges. For example, Christian schools in periphery areas were expropriated by the government under military rule and converted into public schools. Muslim and Christian communities have historically faced greater legal obstacles to building places of worship and other religious institutions. More broadly, the country’s national identity has been infused with Buddhism such that to be truly ‘Burmese’ is to be ‘Buddhist’ (as well as ethnically Burman). The country must develop a broader, more inclusive sense of national identity that embraces all communities, if it is to reach genuine national unity.

Currently religious leaders are playing supportive roles in the peace processes and have begun to take more active roles reconciling ethnic and religious groups. Several organized inter-religious initiatives have emerged in Yangon and Mandalay, seeking to strengthen inter-religious collaboration on specific development and peace issues, or to foster peaceful religious coexistence and combat religiously biased attitudes. There is a recognized need to address historical and emerging extremist religious drivers of conflict (e.g. 969 movement), particularly related to Buddhist/Muslim divisions. However, drivers of these inter-religious conflicts were identified as not being purely religious, but at root, primarily economic, legal, and political in nature.

One Karen religious leader noted that in his state Buddhist/Christian divides do not run deep but could be inflamed if enough is not done to reconcile them now. This leader felt that reconciliation within the Karen population would be necessary before the Karen people could engage effectively in the peace process with the government or create a common platform with other ethnic groups. This religious leader, a monk, was working

with other religious leaders, including Christian priests, CSOs and armed groups to foster intra-Karen reconciliation.

Others noted that when authorities or other community leaders fail to rapidly address tensions between Buddhists and Muslims, communal conflict can escalate very quickly. In some locations, religious leaders are seen as vehicles for addressing community needs with the authorities when the community feels they cannot engage directly with the authorities. This has had mixed success in different states, where some state authorities have been more responsive than others to community concerns. Religious leaders do not tend to serve as primary actors in dispute resolution at the local level (which is generally done by respected village elders), unless the disputes are related to religious issues.

Location Specific Observations

During the USIP trip it was apparent that some rule of law challenges related specifically to the unique complexities of each State that were distinct from the challenges facing decision-makers based in Naypyitaw and Yangon. These findings are discussed in more detail in the following sections.

Mon State

*“No rule of law, no justice;
No justice, no peace;
No peace, no development.”¹⁵*

The USIP team visited Mawlamyaing, the capital city of Mon State, from 15 to 19 February 2013, conducting a series of meetings with the Mon State Chief Minister, Chairperson of the State Parliament, the Attorney General, the Chief Justice, parliamentarians and other senior judiciary and government officials. Separate meetings were held with Catholic, Muslim and Buddhist representatives. The main event, however, was a two-day USIP rule of law workshop in Mawlamyaing on 16 and 17 February with 57 participants attending from both Mon and Karen States. A number of government officials and parliamentarians attended the workshop, including the Mon State Parliament Chairperson, representatives of the Home Affairs Department, representatives of the Karen State Law Office, Administration Department and Immigration. Also in attendance were representatives from political parties, bar associations, university law schools, CSOs and youth representatives.

Mon State, located east of Yangon, has experienced less violent conflict in its recent history than neighboring Karen State. For this reason, USIP was told by those in Mawlamyaing that the environment is less “sensitive.” Indeed, USIP observed that government and civil

¹⁵ Group presentation, Rule of Law Workshop in Mawlamyaing, 17 February 2013.

society engaged one another more openly than in other locations. Workshop discussions between these actors were frank, including on sensitive topics. USIP received a genuinely open welcome from state government officials.

A large portion of the first day of the workshop was spent conducting small group work in which participants brainstormed rule of law challenges affecting their community, state and/or country (see Annex II). The second day of the workshop focused attention on strategies for addressing the identified rule of law challenges. The strategic approach required participants to identify the root causes of the challenge, the specific actors involved in the challenge, those actors and institutions that must be involved in overcoming it, and specific short and long term interventions for engaging those actors and institutions.

“Engaging only the courts and the formal justice system will not suffice in promoting the rule of law because the system deals only with the symptoms of the deeper causes of conflict and endemic lack of respect for the rule of law. For the same reason, introducing or increasing legal punishments or drafting new laws will not be enough to address the root causes for the lack of rule of law.”

“If the people do not have the same opportunities and if people are treated unequally, this will hinder the rule of law process. It will create many more problems and many more grievances will be raised.”¹⁶

The findings of the discussions on legal awareness and corruption have been incorporated into the general observations section in the main body of the report. The remaining two topics are summarised below:

Lack of a rule of law culture

“There is no culture of negotiation and dialogue but this is the only way to achieve peace, democracy, and unity.”¹⁷

The participants noted that there is no political culture of dialogue and diplomacy in the country. This view was echoed by participants in the Nyaung Shwe, Shan State workshop, noting that as a consequence, the laws do not reflect the real will of the people. A genuine negotiation process may be able to address this problem.

According to participants, creating such a culture needs to be addressed through the Constitution, which would provide the right political framework. The Constitution needs to be reviewed and amended to correct those provisions that prevent creation of the necessary political framework. Political actors and members of parliament need to work together to make these changes to support the concept of the rule of law. People need to be educated about the Constitution and their role in a nation governed not by the “word of the

¹⁶ Comments from workshop participants, Mawlamyaing, 17 February 2013.

¹⁷ Shan representative, Union Day event, Yangon, 12 February 2013.

king” but the rule of law. There is a need to engage with and train civil society to assist in this process. There must be increased media freedom to access and share information.

Consideration should be given, not just to immediate local concerns, but also to external pressures, influences, and challenges the country may face in the future. Burma/Myanmar is changing and with this is coming transformation of diplomatic relations with countries such as China, India and the U.S. Protecting the needs of the country and the rights of the people in these relations is and will continue to be a major challenge for the government. Failing to do so could undermine the development of the rule of law.

One participant noted that many of the challenges faced by the country are deeply rooted in the system and the people. The past 50 years (of authoritarian rule) changed habits and practices and the challenge now is to change those habits and practices once again, a process that will take time. Rebuilding the educational system will be key to promoting and achieving this change.

Human trafficking

Poor livelihood opportunity was identified as a central driver of human trafficking. Media, civil society, social welfare organizations, the police and judiciary should all help increase public awareness about the issue of trafficking. Victims or persons at risk require access to information, such as through a telephone hotline, as well as the necessary physical and psychological assistance.

Meetings with state government officials

The USIP team’s discussions with government officials during the visit were generally very open and frank. As a former military commander and former Union level Minister, the Chief Minister recognized the challenge of balancing security/stability with respect for the rule of law, and the importance of both in creating an environment in which there could be democracy. He discussed the role that the New Mon State Party (NMSP) and the Karen National Union (KNU) have played in promoting peace talks with armed groups and discussing the need for peace for the sake of development of the state.

Officials referred to the confusion and contradictions within the Constitution regarding the devolution of power and authority to the state level, noting in particular the relationship between articles 188 and 446 of the Constitution regarding State and Union level law-making. The Mon State government has sent a request to the Constitutional Tribunal and the President seeking clarification on this issue.

Currently there is a good relationship between the state parliament and the central government. The Chief Minister and 10 selected ministers meet twice a month to discuss law reform and local problems and the minutes of these meetings are shared with the central government and related ministries, who are generally quite responsive. Public meetings with representatives from the legal profession, civil society, the judiciary, the

police, etc., are being held more regularly and there is a recognition that all actors need to work together, including police, the courts, judges and lawyers, to improve the rule of law.

The Chief Justice requested training for judges and increased opportunities for them to learn from other contexts. He also cited a need for more access to information and legal materials. The Attorney General, a former High Court lawyer in Yangon, noted that the public now has greater opportunity to bring complaints to the Administration and the courts and has a right to have those complaints dealt with fairly. He emphasized that with these rights also come responsibilities,¹⁸ and the more citizens are educated about their rights and responsibilities, the more effective the rule of law will be.

Karen State

“Rule of law is important not just for our citizens but for every person around the world ... only rule of law can create peace and make peace sustainable.”¹⁹

The USIP team traveled to Hpa-An, the capital of Karen State, on 19 February and, over a period of two days, met with state officials, including the Chief Minister, Attorney General and Chief Justice; National League for Democracy (NLD) members; civil society representatives; armed group representatives; and religious (Buddhist and Christian) representatives.

Karen State, located east of Mon State and bordering Thailand, has experienced a high level of violent conflict for many years, which has shaped much of its current social, economic, and political reality. Multiple armed groups operate in the state, and the local population has sometimes found itself caught between the Burmese military and these armed groups. The existence of these multiple groups is reflective of divides within the Karen community. Ceasefire agreements between the government and armed groups have created a certain level of security and stability in the state more recently but have also created new challenges. Karen residents noted that the government, afraid to take action against the armed groups and be accused of renegeing on the peace process, ignores the fact that they have been operating illegally. The years of violent conflict have left many areas undeveloped, exacerbating longstanding under-development in the state, which was a source of the violent conflict in the first instance. The local population needs greater education and provision of basic services.

The team met with the Karen State Chief Minister, who was accompanied by the Chief of the High Court, the Attorney General, the Speaker of Parliament, the Chief of Police, the

¹⁸ Article 21, 2008 Constitution: (a) Every citizen shall enjoy the right of equality, the right of liberty and the right of justice, as prescribed in this Constitution; ... (c) Every citizen is responsible for public peace and tranquility and prevalence of law and order; (d) Necessary law shall be enacted to make citizens' freedoms, rights, benefits, responsibilities and restrictions effective, steadfast and complete.

¹⁹ Chief Minister, Karen State, February 2013.

Head of Corrections and a number of other government officials. The State Chief Minister identified the main drivers of conflict in Karen State as being ethnic and religious. He argued that the central government has taken positive steps to address the conflict, including the establishment of peace committees at a state and Union level, dialogue with armed groups, and the introduction of the 2008 Constitution, which although in need of review, has been a necessary tool for bringing about peace and stability. There has been broad recognition by all parties that the rule of law has a significant role in ensuring sustainable peace and stability.

The State Chief Minister emphasized that to understand the current environment it was crucial to look to the past and appreciate the historical, cultural, ethnic and political contexts. He noted that examining lessons learned and experiences from elsewhere is useful, but ultimately, shaping the best way forward for the country must be a locally driven activity. The Chief Justice also reiterated the idea that there is a no 'one size fits all' approach to rule of law reform; rather it requires different sectors working together to identify and understand the needs, rights and responsibilities of all citizens.

The USIP team was able to visit the township, district and high court rooms and observed a land dispute being heard at the time. One of the lawyers involved in the case had been a participant in the USIP rule of law workshop in Mawlamyaing. A witness was providing evidence at this time and interestingly, the judge was recording the witness's testimony on a large manual typewriter.

During discussion within the court compound, the Chief Justice noted to the USIP team that his staff members require capacity building, particularly in the area of the rule of law and peacebuilding. In the view of the Chief Justice and Attorney General, who was also present, there were no barriers to citizens accessing justice and the current Constitution protects all people's rights. The ceasefire has made it easier for people to access the justice system. Where there are no courts, people can approach police outposts or the local administration office for assistance. Overall they felt it was rare for a person not to be able to access the justice system. The major challenge they saw was the lack of legal awareness by the people. The Attorney General noted that very few people understand the legal process and many are illiterate. The judiciary, lawyers and those with legal education need to play a role in educating communities about the law and legal procedures.

The USIP team also met with more than 30 members of the NLD in a two-hour meeting that was conducted in a town hall style. After brief introductions, the members asked a number of questions of the USIP team. Most of the questions related to the core issues of power devolution and decentralization, and the ability of ethnic states to have more control over their own governance and resources. There was a lot of discussion about the Constitution and the need for some provisions to be amended, the role of religion and religious leaders in peacebuilding, protection of natural resources, the country's relationship with India, China and the U.S., and U.S. interests in Burma/Myanmar. Additional concerns included access to scholarships for students to further their education, the promotion of small and medium business development, poverty reduction, livelihood, access to basic services, and ensuring humanitarian aid reaches the people who most need it.

At the NLD meeting, the main criticism of the Constitution was that it does not go far enough with respect to decentralisation and devolution of power. While few groups still continued to demand separation from the Union, there was a desire for greater autonomy over their own affairs. However, when state governments were created they were not allocated budgets sufficient to govern.

As mentioned earlier, religious representatives noted the need to heal divisions among the Karen, and particularly between Buddhists and Christians. They felt that intra-Karen dialogue and trust building was necessary as a pre-requisite to progress in talks with the government and with other ethnic armed groups. As such, the religious leaders were working with civil society leaders to organize a Karen reconciliation meeting, which subsequently took place in mid-March.

Other challenges to rule of law reform identified by residents included foreign investment and government projects related to the state's natural resources, lack of infrastructure in remote rural areas, the need for increased capacity of the police to respond to the people's needs, the lack of awareness among the population about their rights, the Constitution and the political system and the need for amendments to the Constitution to protect ethnic groups. Inequality and differential treatment among groups only breeds more conflict. Religious leaders are engaged in peacebuilding efforts, but generally in an unofficial capacity at a state level. It was also recognized that peacebuilding needed to start at the village level and through the local administration, and that the government should build trust and begin dialogue with the people. Currently people do not understand or feel connected to the peace process.

Additionally, residents indicated that poverty and the tension between rich and poor were powerful drivers of conflict and barriers to sustainable peace and reform. Cronies (wealthy business people who had political and financial ties to Burma's former ruling generals) control many major enterprises. Small businesses, such as local restaurants, are locally owned. Youth (between the ages of 18 and 40 years) migrate to Thailand where there are better unskilled labor job opportunities, however most work illegally and have no legal protection. The educated go to the U.S., Singapore and Australia and few return because of the lack of job opportunities in Burma/Myanmar. Moreover, the country does not recognize dual citizenship so those that attained citizenship elsewhere are reluctant to give that up. The government is currently exploring a permanent residence option for dual citizens to address this issue and encourage more people back to the country

The USIP team met with a representative from the Karen National Union (KNU) Ceasefire Liaison Office and was able to discuss in more detail the conflict issues affecting the state. The discussion covered a range of issues, including the role of the Constitution, the relationship between the military and the new civilian government, the relationship between the KNU and the military, peace processes, and poverty as a driver of conflict.

The KNU representative remarked that having achieved the ceasefires, political dialogue must commence. The representative pointed out, however, that ethnic groups want to see amendments made to the Constitution before real dialogue could take place.

The Ceasefire Liaison Office representative discussed the role of the military and its relationship to the new civilian government in some detail. He noted that the most important issues were whether the military would allow the states to exercise power and the extent to which the military would uphold law and order and obey the government. In his opinion, when the military acts in opposition to the government (for example, in Kachin State when the President declared a halt to fighting and the military continued to fire at the Kachin Independence Army (KIA) and the people) this may be a tactical move – the government is showing the face of peace (the carrot) and the military is the stick, implementing the real will of the government. “Nothing will happen without a command from the central Union government,” he argued. Ultimately, the Constitution retained power for the military. He surmised that it would take time to reduce military authority in the government and eliminate their involvement in the administration of the nation. The representative suggested that the President may want peace but is balancing the need to reduce the authority of the military without “annoying” the military – if the President overreaches, the military will respond. At the same time, the President will use the military when it suits him.

The key concern for those involved in ceasefire talks at present is negotiating and then setting up monitoring mechanisms for a code of conduct between the military and the KNU. Current tensions stem from disputes over defining territorial presence – the military is inside KNU areas and the KNU and the people want them to leave. However the military says they need to remain in the border areas for national security reasons and any withdrawal must be done slowly. It is believed a code of conduct will help to address these fears, holding both KNU and military forces accountable for their actions. “Peace will follow the code of conduct.” After reaching agreement on a code of conduct, monitoring mechanisms must be put in place to ensure the code is respected. It was suggested that monitoring could be done through a dedicated domestic third-party body comprising religious leaders, civil society and public figures. The representative noted that KNU leaders were interested in peacebuilding and wanted to involve the public fully in the process. He also remarked that Christian and Buddhist religious figures have influence over the public and they are able to bring together all Karen groups, armed or not, as they are seen to be neutral. It would be good for them to be involved in the peace process, but currently they play a very limited role – simply keeping people informed of progress on peace talks, etc.

The representative noted that while the KNU and other armed groups have received assistance and training from outside experts on negotiation, managing peace processes, and peacebuilding, the government has received less support and seems to lack capacity. In particular, the President and his office need international support to learn how to deal with those who are impeding the peace processes.

The KNU representative said that at a local level, international actors could provide assistance with access to education and other basic services, including treatment for psychological trauma. The state has experienced violent conflict for a very long time and many people remain afraid and traumatized.

Shan State

“We need honesty, sincerity and trust – all these are lacking now and so there is no rule of law and peace”.²⁰

The USIP and USG teams traveled concurrently to Shan State from 24 to 28 February 2013. The USIP team conducted two one-day rule of law workshops, the first on 26 February in Nyaung Shwe and the second in Taunggyi on 27 February. In addition, a series of meetings was held in Kalaw including a meeting with NLD members and civil society representatives led by the USG inter-agency group. The USIP team also met with religious representatives (Buddhist, Christian and Muslim). The USG team conducted a series of meetings with officials.

During the visit to Shan State, the USIP team experienced a greater level of surveillance from state authorities than in previous locations. The team was monitored by Special Branch police (intelligence) who asked questions about the team, their purpose, and plans in Shan State. In the interest of total transparency, the team provided all the necessary information, including all workshop materials. In general, the monitoring by police seemed to be motivated by bureaucratic procedure and not an intention to intimidate or impede USIP’s work. An indication that some habits are slow to change in different parts of the country. USIP’s experience echoed what civil society representatives in Mon State had noted: though their activities are still monitored the authorities generally no longer prevent the activities from taking place.

The two rule of law workshops followed a similar agenda to the Mon State workshop although in a more condensed version. Many of the rule of law challenges raised in the two workshops were similar to those identified in the Mawlamyaing workshop in Mon State and which are addressed above in the general observations section of this report. However, the Shan State workshops also revealed a series of unique observations and challenges, reflecting the differing complexities and concerns within the various states across the country.

During general discussions in the Nyaung Shwe workshop, one local government official noted that the rule of law differs between societies and countries according to levels of education and the moral center of the community. Words or phrases like the ‘rule of law’, ‘justice’ and ‘security’ are terms that can be abused by the ruling class, with ‘security’ often

²⁰ Participant, Nyaung Shwe workshop, 26 February 2013.

serving as an excuse to separate people and create divisions within society. But all people, without discrimination, should have access to justice and security, and justice should be tempered with mercy.

Participants identified additional local challenges related to illegal gambling and narcotics, and the failure of administrators and the police to enforce laws equally against those guilty of illegal activities.

A number of groups raised problems relating specifically to land tenure and usage and environmental destruction around Inle Lake. For example:

- The arbitrary confiscation of farmland by the government (eg: for hotel zones), military, armed groups and cronies (with the aid of local government);
- The lack of public participation and transparency by the government in how hotel zones are defined and negotiated;
- Unfair and inadequate compensation (below market value) to farmers and villages for confiscated land e.g.: the Monywa-Letpadaung copper mine
- The confiscation of religious sites, including Buddhist monasteries, for government defined hotel zones;
- Lack of adequate legal protection for farmers' land ownership and usage rights – reference was made to the fact the Constitution grants the Union ultimate ownership of all lands and all natural resources above and below the ground, water and in the atmosphere in the Union. According to the Constitution, the Union shall permit citizens right of private property in accordance with the law (article 37);
- The need for an equal ratio for the extraction and utilization of natural resources across the different states and regions (some feel that they are having a disproportionate amount of natural resources extracted from their lands as compared to other states and regions.);
- The failure of the government to invest in economic development of the states, perceiving them solely as a cash cow for extraction of state-owned natural resources;
- Disregard for the welfare of the local ethnic people falling within government defined Inle hotel zones and for the local heritage of Inle lake;
- The need to protect cultural heritages and buildings related to local ethnic people from privatization;
- Illegal logging in state-owned forests.
- Altering land records to designate privately owned land as public space.

When identifying strategies for addressing certain challenges, groups chose to address the following issues:

- Corruption
- The lack of a genuine Union system
- Laws that are drafted to benefit only a certain group of people
- The troubled peace building process in Kachin State and national reconciliation
- Land tenure and land confiscation

The corruption and legislation issues are incorporated in the general observations section above.

The group addressing the issue of the lack of a genuine Union system identified the root causes as being the lack of equal treatment and mutual respect for the diverse ethnic groups that have been divided since the colonial period, the practice of military dictatorship, and the dominance of a single ethnic group in power. Fundamental to the establishment of a genuine Union system was reform of the education system and the inclusion of politics and civic education in the curriculum so that every citizen could be aware of the how and why of political engagement.

Another group referred to the dilemma of the Union, noting there is still no real implementation of federalism in the country and no transparent political dialogue taking place on the issue. Interestingly, during the USIP trip the word 'federalism' was rarely employed in discussions. Participants did make references, however, to issues of 'decentralization' and 'devolution of power', and the need for clarity on the more practical issues of whether a state had the authority and capacity to govern in order to move forward (see, for example, the action taken by the Mon State Chief Minister to request clarification on state law-making authority).

The group addressing the Kachin conflict noted that it had a long history and therefore there was little trust and understanding between the military and the armed groups. This made it difficult for the peace building process to progress. The group argued for a neutral third party mediator, accepted by both parties, to assist them in reaching a solution. Negotiations should be transparent and fair and the outcomes drafted into general agreements that are actually implemented on the ground. There should be clear rules and regulations established which all parties agree to observe. In the long term, the government must provide education, economic and social assistance to all regions based on each region's actual needs (not just adopting a 'one-size-fits-all' approach).

Finally, three groups addressed the issues of land tenure and usage as a major challenge to the rule of law. They lamented that there was no public participation or consultation in the development of large infrastructure development projects initiated by the government. For example, the government has a 'national plan' for the area, but this has been formulated without adequate surveying, without identification of who owns and/or uses the land and for what purpose, and without adequate consultation with those affected. There are inadequate domestic laws and mechanisms to address issues of land registration, land ownership and there are no associations dedicated to the protection of farmers' rights. The administrative bodies that decide matters regarding use of farmland are weak and

farmland is regularly seized arbitrarily by military units, business cronies, and other entities. The executive and judiciary processes are influenced by former members of the State Peace and Development Council (SPDC), their business cronies and associates and are therefore not independent.

While recognizing the need for more hotels to support and develop the tourism industry in Shan State, workshop participants noted that development and implementation of projects have been done without any proper assessments or preliminary studies, nor any consultation with affected residents. The seizure of monastic plantations for example has been done with disregard for relevant domestic laws, for the environment, and for religion²¹.

Participants suggested that the government should engage in dialogue with all affected stakeholders to identify more sustainable and effective solutions to the constant expansion of hotel zones. Government officials at the ministerial level should meet with local people, such as affected farmers, and discuss with them the government's policies and future plans. New laws should be passed to protect land ownership and usage rights. Farmers and lawyers have begun to form associations to serve as a mechanism to challenge land confiscation practices. They need greater support and protection to advocate for farmers' rights and to educate farmers about their options. Participants also argued that financial compensation for confiscated land should be offered at the market rate.

During open plenary discussions in the Taunggyi workshop, participants questioned how the public could actually participate in the law-making process; whether the death penalty can be reconciled with justice based on respect for human rights; the sequencing of transition (they noted that currently the priority is conflict resolution through political dialogue, but wondered does the rule of law come after that step?); how one persuades those who are resistant to change and reform?

A challenge raised that was unique to the Taunggyi workshop was that of using the formal justice system to protect rights. Local lawyers provided several examples. The first was of a village that sued the government for property damage and trespassing (for activities related to a land confiscation plan). The government counter-sued, charging the village of disobeying an order lawfully promulgated by a public servant. A second example was of a community that sought to take legal action against the government regarding the use of donated land, but at a certain stage the case was thrown out by the court and they were told they had no further appeal rights. The community sought to hold a demonstration against what they felt was executive-level interference in the case, but their request to hold a protected demonstration was refused. Eventually the community held a protest but when several people opposed to the demonstration initiated a fight with some of the youth protesters involved, the police arrested more than 200 members of the community.

²¹ Much of this discussion refers to a particular hotel zone project at Inle Lake undertaken arbitrarily by the Shan State government, perhaps with the encouragement and support of the central government.

Naypyitaw

“We must understand the history and context ... the country is functioning despite the fighting ... we need to work to establish trust.”

“The rule of law is law and order and security, it is also rights and access. The challenge is finding a balance between the two...”²²

The USIP team spent the 21 and 22 February 2013 in Naypyitaw. The primary focus of the visit was to follow-up informally with senior officials with whom USIP had met on previous visits, including the Office of the Chief of Police, the Office of the Attorney General, the Supreme Court and others to provide them with requested technical materials on rule of law issues.

Several subjects were discussed during meetings with officials, including the institutional challenges facing the government in identifying a focal point for the development and implementation of a strategic rule of law reform plan and for ensuring that all levels of the government take responsibility for their part in the reform plan. Officials emphasized that the full support of all sections of government, including the Vice-President, Chief Justice, Attorney General, Parliament, and various ministers, was necessary for the design and implementation of a national plan of action. As noted earlier, while the President has identified the Attorney General as the focal point for rule of law reform, the Chief Justice and the Parliament act independently.

One government official noted the need for an extensive review of existing legislation to ensure it was both up-to-date and consistent with the Constitution, but admitted a lack of technical and resource capacity within the government to undertake this task. He also described a need for more knowledge about basic rule of law concepts and reforms at the highest ministerial levels, arguing that capacity building is needed within the Supreme Court, the Attorney General’s Office and regional offices, the Police headquarters, civil society and academia to develop a strengthened system of checks and balances for the promotion of the rule of law.

A government official noted the challenge of balancing national security and the need for stability with respect for and implementation of the rule of law was discussed in recognition that stability was a prerequisite for development. Ultimately, some officials in Naypyitaw, as in other places, concluded that reform was being undertaken in all areas but identifying how best to move forward required a strong understanding of the history and context of the country. The country’s long history of military government has led to a primary focus on security, which continues to characterize the new government. This creates certain barriers and inhibitions to discussion of reform and change. While the President wants change, many below him are still reluctant and uncertain. Therefore

²² Senior government official, Naypyitaw, 22 February 2013.

patience is needed as trust gradually builds, resisters become engaged, and awareness is raised at all levels about the process of change, the benefits of change, and the adoption of a shared vision and goals.

Yangon

“Change is not just a problem for the government, but for all citizens.... Now we have change in ‘form’ but not in ‘essence’.”²³

During several days in Yangon between 9-15 February, 22-24 February, 28 February and 3 March 2013, the USIP team met with several CSOs, attended a donor working group meeting on governance and the rule of law, met with U.S. Embassy representatives, and hosted an ‘Ethnic Roundtable’ on 23 February 2013, which was observed by the USG inter-agency team.

Civil society representatives discussed a variety of issues with the USIP team. Many of these issues reflected the findings elsewhere in the country. Of particular note was the desire of many organizations to engage more with the rule of law reform process through dialogue with communities, within civil society, and by feeding pertinent information to the government.

One CSO representative referred to the challenge of engaging with existing complaint mechanisms such as the Human Rights Commission. The Commission will only engage with registered NGOs and is purportedly receiving more than twenty complaint letters a day, but so far has only dealt with 2 cases. The Rule of Law and Tranquility Parliamentary Committee has received thousands of complaints. The complaints tend to be very lengthy and its staff were described as being overwhelmed. Another representative of a CSO that advocates for reform of specific pieces of legislation, compared the resistance they encounter from executive branch agencies, in this case the Ministry of Home Affairs, with the more responsive attitude they encounter from the legislative body.

Several representatives complained that most trainings and workshops for CSOs are held in Yangon and the training tends to be narrowly focused and not addressing the priorities of the CSOs or the communities they serve. Furthermore, trainings tend to target the same participants time after time.

With regard to engagement with the ethnic states, civil society representatives noted that international attention focuses mainly on the worst conflict-affected areas (Karen and Kachin, as well as Chin, due to its lack of development), but noted that just because there is no conflict in an area does not mean there is no oppression or problems. They remarked that there are areas of the country where people have never heard of CSOs and trainings or

²³ CSO representative, 1 March 2013.

workshops. Some criticized what appeared to be a preference on the part of the international community to focus on ethnic states that have a sizable Christian population, or to engage Christian organizations and actors more so than others. Competition among groups for international attention risks exacerbating tension and conflict, particularly when the international community is perceived to favor some groups over others. Some noted, for example, that perceived preferential treatment of one group's grievances over another's has contributed to the conflict in Rakhine State. Focusing attention unduly on ethnic populations also arouses concern among the Burman population, who have also suffered oppression from military rule.

It is crucial that the international community consider how to bring all stakeholders together, especially at township and district levels, and to conduct work in a way that aims to reduce divisions rather than enhancing them. Representatives suggested that the international community take a thematic approach, such as rule of law, instead of focusing only on one specific group or area. Many groups could then be brought together to address the subject as a means to foster unity, trust and dialogue among disparate groups. Both political party representatives and CSO members highlighted the danger of focusing assistance on CSOs over support to government institutions as this could be seen as threatening and destabilising and may meet with resistance from the government level. They considered international support to the government as a means of promoting constructive engagement between civil society and the government.

Ethnic roundtable

The USIP team conducted a roundtable on 23 February 2013 attended by approximately twelve representatives from various ethnic group political parties, ceasefire groups and legal professionals. The roundtable was also observed by the USG inter-agency team.

The roundtable commenced with an overview of key rule of law concepts and principles, before turning to discussion of current rule of law challenges. A plenary exercise asked participants to apply a strategic approach to addressing corruption, which was followed by an open plenary discussion about the rule of law generally and the role the international community could play in promoting the rule of law in Burma/Myanmar.

Participants identified a number of rule of law challenges, many of which had been identified in other locations, and they echoed concern that the preponderance of trainings and workshops by international organizations occurred in Yangon and Naypyitaw at the expense of ethnic states and other outlying areas.

Other challenges identified by the participants included:

- The impunity of the military;
- Vagueness within the Constitution regarding law-making authority of the Union and states;
- The absence of an independent judiciary;
- Corruption;
- The lack of qualified judges, lawyers and police;
- Barriers to access to justice including financial cost, corruption, delays and backlog of cases;
- Muslims do not access the justice system because the Muslim community operates outside of the system and the police do not arrest them;
- The lack of legal awareness – people do not know their rights and responsibilities or those of the government;
- The lack of respect between the people and the government;
- Laws are slow to be implemented because the rules and regulations that allow a law to be put into practice are not defined;
- The unfair and biased elections – many members of parliament are not representative of the people;
- An historically-based mindset of fear which holds people back from pushing forward with demands for change (for example, in the past, any meeting with a foreigner had to be reported to the authorities);
- Lack of public participation and transparency in law-making.

In discussing how the international community could best assist in the promotion of the rule of law in Burma/Myanmar, participants agreed there is tremendous interest in learning from other experiences and obtaining advice from the international community about how to change the mindset of children, youth, and adults. Lawmakers, lawyers, civil society and the media all need education. They urged that the international community should lobby the executive branch, pressure the President to fulfil his promises, and support him along the path towards a more democratic society. Citing the example of Japanese government munificence with debt forgiveness, they pleaded for more financial assistance.

Recommendations

The following recommendations are informed by USIP trips in January and August 2012 and February 2013. They include a range of initiatives that the USIP team believes could contribute to strengthening the rule of law in Burma/Myanmar if addressed strategically. Such a strategic approach should be based on the actual needs and capacity of those individuals and institutions engaging in rule of law reform and the identified priorities both at the government and community levels.

The below recommendations support the following broad programmatic goals:

- i. Strategic Rule of Law Reform Planning
- ii. Enhanced Efficacy of Government Entities
- iii. Strengthening Civil Society Organizations
- iv. Enhancing Access to Information and Transparency
- v. Strengthened Legislation and Law Reform Processes
- vi. Improved Community Empowerment and Access to Justice

USIP sees there are three major types of assistance needed in Burma/Myanmar, namely governance support, governmental-civil society partnership and civil society support. This assistance could be provided by domestic or international actors, or, ideally, a combination of the two, but either way must be implemented in a coordinated and collaborative matter with local government and non-governmental stakeholders leading the process. Therefore, each programmatic goal is categorized by the type of assistance required and then prioritized into short and medium-term objectives.

Strategic Rule of Law Reform Planning

Governance Support

Short Term Recommendations:

- Provision of technical support to government stakeholders to enhance their understanding of the essential principles of rule of law and democratic governance and what these concepts look like in practice.
- Provide technical assistance to support key government entities, including the President's Office, the Attorney General's Office, the Supreme Court, the Police and Parliament, in developing a comprehensive and coordinated strategic plan for rule of law reform. The plan should include clearly mandated roles and responsibilities for reform implementation, identified priorities, sequencing of short, mid and long term goals, realistic timeframes, processes for public participation, and in-built accountability mechanisms.
- Provision of trainings to relevant government officials and other key stakeholders on strategic approaches to rule of law development and implementation, including the possible establishment of a working group involving international experts, domestic agencies and scholars to support the planning process.

Medium Term Recommendations:

- Provision of technical assistance to support key government entities to establish the institutional systems required to implement the agreed strategic plan for reform.

Governmental-Civil Society Partnership

Short Term Recommendations:

- Development and implementation of a joint government/civil society campaign to promote greater public understanding of, support for, and participation in the reform process.
- Support the establishment of an independent body of respected persons and civil society representatives to assist the government in identifying the priority needs for rule of law reform.

Civil Society Support

Short Term Recommendations:

- Technical support to CSOs on understanding the principles, standards, mechanisms and methods of rule of law promotion and the potential role of CSOs in promoting rule of law in a transitioning context.
- Technical support on how to constructively contribute to rule of law reform such as providing relevant and credible data, research and baseline information on rule of law issues, articulating and advocating priority community justice concerns and proposing relevant legal solutions and promoting dialogue and information sharing between the government and the public on reform planning.

Enhanced Efficacy of Government Entities

Governance Support

Short-Term Recommendations:

- Provision of capacity building workshops on the rule of law and related concepts and guiding principles and strategic approaches to promoting the rule of law to government officials across all branches of government and at a state and Union level.
- Provision of technical experts and assistance to the executive and legislative on how to develop environmental and social guidelines for investment and development, particularly related to natural resources and extractive industry; negotiating pre-existing and future foreign investment contracts in line with those guidelines; available international dispute resolution mechanisms; and development of legislation and fiscal policy that promotes foreign investment whilst adequately upholding local and national interests.
- Provision of technical support to key government entities on issues of land tenure and usage and procedures and mechanisms for managing land registration, confiscation and evictions.
- Provision of technical assistance in developing an electoral law and capacity building and training for the Electoral Commission in preparation for 2015 elections.

- Support a review of the role of the Attorney General's Office as a focal point for rule of law reform, including the organizational and institutional challenges and possible solutions.
- Provide assistance on how to work with both government reformers and actual or potential reform resisters to positively manage transition challenges and uphold commitments to progress towards peace, rule of law and democracy.

The following recommendations are based on specific requests made to USIP by the specific government entities during visits:

Supreme Court

- Technical assistance to enhance judicial capacity through trainings, including on the topics of judicial independence; study abroad and exchanges for judges.
- Technical and resource assistance to strengthen judicial administration including a review of the current structure and the possible need for a Ministry of Justice and judicial review commission.

Myanmar Armed Police Force (the Police)

- Support to conduct an institutional needs assessment (including public and professional perceptions surveys within the police and the population) and the development of an institutional strategic plan for enhancing the efficacy of the Police.
- Provision of capacity building and equipment to support criminal investigation skills.
- Provision of human rights training and assistance to integrate a rights-based approach into the workings of the Police.
- Technical support in the form of research and comparative approaches to police/prosecutorial cooperation.
- Financial and technical support for awareness-raising on preventing and eliminating trafficking in persons.
- Technical and financial support to improve juvenile justice systems, including creating a child-friendly program under an anti-trafficking unit.
- Study tours and exchanges for police staff to other countries.
- International policing experts seconded to the Police.
- Support in the establishment of comprehensive training programs and a Police Training Academy for new and existing police officers.
- Technical assistance in reforming police laws and the police manual.

Office of the President

- Technical support to develop a system for and assist in the review and drafting of an up-to-date penal code and code of criminal procedure.
- Provision of capacity building for government entities on management skills, including foreign aid/donor management.
- Assistance in conducting political dialogues on key issues including revenue-sharing and cultural and linguistic rights.
- Support to establish an independent bar council/association.

- Technical assistance to parliamentarians, the Bills Committee, and the Attorney General's Office in legislative drafting skills
- Technical assistance to develop a legislative drafting curriculum in the faculty of law
- Technical assistance and financial support in addressing transnational crimes including drafting laws against the smuggling of migrants and laws to protect victims of trafficking and support to a coastguard to protect against smuggling and trafficking to Rakhine State.

Strengthening Civil Society Organizations

Civil Society Support

Short Term Recommendations:

- Technical and financial support to CSOs to build their internal capacity regarding staffing and structuring, identification of organizational and community priorities/missions/goals, financial and project management, monitoring and evaluation, reporting and grant application and management.
- Support to develop the internal technical and resource capacity of CSOs to develop and manage rule of law related programs at a community, state and national level such as legal and rights awareness raising, civic education, legal aid, legal education, community paralegals.
- Support to initiatives that promote increased networking, cooperation and coordination between CSOs, particularly at a township, district and state level.
- Provision of capacity building workshops on the rule of law and related concepts and guiding principles and strategic approaches to promoting the rule of law to CSOs and other non-government entities such as bar associations and the business community, such as through the Union of Myanmar Federation of Chambers of Commerce and Industry.
- Provide technical support to CSOs to engage in facilitating dialogue and trust building between CSOs themselves, between civil society and government and between the government and the public.

Governmental-Civil Society Partnership

Short Term Recommendations:

- Support activities and mechanisms focused on more effective engagement between civil society and the government, for example, through training on effective advocacy strategies, increased understanding of government processes and the role of civil society ,
- Provide support to organizations that may play a bridging role between citizens and the government, including through supporting government-CSO partnerships.

Medium Term Recommendations:

- Develop and deliver a rule of law training of trainers for identified members of civil society, the legal profession and government staff at the Union, state and township levels in order to promote sustainable continuation of rule of law trainings in the country.

Governance Support

Short Term Recommendations:

- Build the understanding of the relevant government staff on the role of civil society in supporting and promoting rule of law reform in transitioning contexts.
- Support the government to ensure CSOs have the space to operate lawfully and freely, including the development of a normative framework for the registration and operation of CSOs, in consultation with civil society.

Enhancing Access to Information and Transparency

Governance Support and Governmental – Civil Society Partnership

Short Term Recommendations:

- Establishment of legal libraries/resource centers in each state to allow increased access to information for both legal professionals and the public.
- Identification and provision of key legal information and resources required by legal professionals, judicial and government staff in the states and at the Union level, in the relevant languages.
- Provision of support to the government to establish procedures and mechanisms for ensuring greater public access to information thus increasing transparency and accountability, such as an effectively drafted and implemented freedom of information act, undertaking a review of media and press freedom laws, strengthened engagement between the Ministry of Information and both private and public media sources to ensure accurate information regarding reforms is shared with the public, and publication of government budgetary allocations.

Civil Society Support

Short Term Recommendations

- Capacity building support and assistance to local media organizations to develop public programs on rule of law and good governance, including legal information and education, understanding government institutions and systems, such as the land registration department or the role of the police.

Medium Term Recommendations

- Support the broadcasting by internet and/or satellite television of parliamentary sessions in order to promote public participation in governance through improved access to information and increased transparency of government actions.

Strengthened Legislation and Law Reform Processes

Governance Support

Short Term Recommendations

- Technical support to the Attorney General's Office to assist with the development of a strategic plan identifying resource and capacity strengths and weaknesses to

undertake law reform, the gaps and priority areas of law reform, and the necessary system for drafting specific pieces of identified priority legislation in the short term.

- Provide technical experts and assistance to the government at the Union and state levels, to legal professionals, political advisors and parliamentarians on legislative drafting and reform.
- Support the government to establish procedurally transparent and participatory law-making procedures and mechanisms at all levels of government for ensuring increased public participation in law reform processes.

Medium Term Recommendations:

- Support the establishment of a permanent, independent law reform body to review and recommend law reform of existing and proposed laws.
- Provide technical expertise to the government/Parliamentary commission to assist in reviewing the Constitution and priority articles that may require revision.
- Support capacity building of the judiciary in the area of judicial review.

Government – Civil Society Partnership

Short Term Recommendations:

- Support initiatives to ensure public dissemination of proposed laws and amendments through government, non-government and media sources in both Burmese and ethnic languages, including the development of a publicly accessible database of laws currently under review.
- Support government initiatives to invite members of the public and organizations to submit observations on draft laws and ensure mechanisms are in place to adequately respond to submitted observations.
- Support initiatives to develop an awareness campaign around the role, contents and meaning of the Constitution, to be implemented by government with the assistance of civil society and the media, in order to enhance public understanding of and engagement with constitutional reform debates.

Civil Society Support

Short Term Recommendations:

- Provision of capacity building training to CSOs to strengthen their role in disseminating, commenting on and advocating for amendments to proposed legislation.

Improved Access to Justice

Governance Support

Short Term Recommendations:

- Support the provision of impartial and qualified translators in all courts at no cost to the parties, where the mother tongue language of the parties to the proceedings is not Burmese.

Government – Civil Society Partnership

Short Term Recommendations:

- Provide support to CSOs to develop projects that enhance dialogue and trust building between local communities and police and other security actors, such as the justice and security dialogue model introduced by USIP in a number of similar transitioning contexts.
- Support joint government-civil society initiatives to promote education about the legal system and laws within schools and to the general public.

Civil Society Support

Short Term Recommendations:

- Provide technical support to CSOs operating at a community level to develop and implement rule of law projects addressing identified justice and rule of law needs within the target communities. Projects may involve training on basic laws and the Constitution, navigating government processes such as how to register land title or obtain civil documentation, community mobilization and effective advocacy on local issues of concern, and the provision of legal advice and assistance.

Medium Term Recommendations:

- Provide technical support to existing decision-making mechanisms (both formal and traditional) at village and township levels, for example, by providing local decision-makers with increased knowledge about the law, mediation and problem solving skills.

Annex I: USIP Trip Schedule, February 2013

Date	Activity
9 February	USIP team arrives; preparation meetings
Yangon	
10 February	Workshop and roundtable preparation meetings
11 February	Meeting with USAID Mission Director
	Meeting Shalom Foundation
	Meeting with Hope International
	Meeting with Japanese anthropologist
12 February	Union Day Event
	Meeting with Arakan League for Democracy
	Dinner with United Nationalities Alliance and NLD Member
13 February	Internal planning meetings
	Meeting with Sitagu Academy
	Civil society roundtable meeting
	Meeting with UN Consultant
14 February	Internal planning meeting
	Governance Working Group Brief
	Internal planning meeting
Mawlamyaing	
15 February	Meeting with NLD Members
	Meeting with State Minister and Members of Parliament (Mon State),
16 February	Rule of Law Workshop, Day 1
	Dinner meeting with Mon State government officials
17 February	Rule of Law Workshop, Day 2

	Dinner meeting with civil society representatives
18 February	Roundtable meeting with civil society representatives
	Meetings with Catholic Bishop and Association of Muslim Organizations
	Meeting with Mon State Chief Minister
	Meeting with Mon State Government Officials
	Meeting at monastic school
Hpa-An	
19 February	Meeting with Karen State Government Officials
	Meeting with NLD members
20 February	Meeting with Buddhist and Christian leaders
	Meeting with civil society representatives
Hpa-An and Naypyitaw	
21 February	Meeting at KNU Ceasefire Liaison Office
	Travel to Naypyitaw
	Dinner with government officials
22 February	Meeting with Supreme Court staff
	Meeting with Attorney General staff
Yangon	
23 February	Ethnic Roundtable
Kalaw	
24 February	Meeting with civil society representatives
	Meeting with Buddhist leaders
	Meeting with Muslim leaders
25 February	Meeting with local priest
	Internal planning meetings
Nyaung Shwe	

26 February	Rule of Law Workshop
Taunggyi	
27 February	Rule of Law Workshop
Yangon	
28 February	Internal meetings
	Dinner with International Senior Lawyers Delegation
1 March	Meeting with civil society representative
2 March	Meeting with US OTI and Pol/Econ section representatives
3 March	Team departs

Annex II: Identified Rule of Law Challenges

Mawlamyaing:

- Lack of strong *policy, rules and regulations* to allow for practical implementation of existing laws.
- Lack of *public participation and transparency* in the law-making process.
- *Weak capacity* of law enforcement bodies, legal professionals and the judiciary to implement the rule of law – an issue of both knowledge but also willingness/motivation to conduct themselves professionally due to the low salaries they receive; criminal investigation units need to be equipped with modern technology and have adequate budget to operate.
- *Lack of support* to local administration to implement rule of law reforms and ensure laws are enforced.
- *No judicial independence.*
- *Corruption* – within institutions due to low salaries, lack of interest in their job; at the same time people do not know what the fee structures are, what they must pay and therefore they just keep paying more money in the hope that action will be taken to address their issue. The culture of corruption has become a way of life. Everyone knows that they need to pay extra for any government service, and in addition there is a fear of ‘losing face’ if they do not automatically offer to pay the bribe or incentive (without it being requested).
- *Lack of equality before the law* – powerful people, including the lawmakers, are seen as being above the law, and are protected by laws that are unfair and unlawful; officials are conservative and continue to abide by the old systems, which hinders the governments efforts to promote reform; village leaders sometimes act arbitrarily and without any transparency in their decision making.
- Poor education of the population and *lack of legal awareness* – people do not see the law as being relevant or of any benefit to their daily lives; many of the laws are drafted in English or Burmese and are not easily understood, even by legal professionals; many laws are seen as out-dated and not responding to the populations actual needs; laws do not take into consideration relevant traditions and customs, or restrict custom and tradition; people do not know the consequences of breaking laws (also note the weakness in law enforcement). If people knew the law, they could use it to protect themselves and could also promote the rule of law. Understanding the rules and regulations which apply at the village and township levels would assist in achieving peace and tranquillity in the area.
- *Lack of consumer protection* – people have no recourse to justice if they are sold faulty products, cheated by merchants etc.
- *Barriers to access to justice* – people are fearful and face intimidation if they try and take action through the formal justice system. Witnesses fear testifying, as they do not know what consequences there could be from the authorities or other powerful persons. Access to the courts is costly due to the cost of hiring a lawyer, high administration costs, including the bribes or incentives that must also be paid to judicial staff; people are reluctant to take criminal or civil cases to the courts.

- *Armed groups* – in remote areas armed groups are unlawfully extorting money from citizens with impunity; armed groups establish their own courts and adjudicate cases without any accountability; when peace agreements are signed, the armed groups are able to undertake criminal activities with impunity because the government is concerned that they will be accused of breaking peace agreement; weak law enforcement in border areas by the government means that whichever group/person administers the area is able to act arbitrarily and in their own interest.
- *Poverty* – people are not worrying about the law because they are too concerned with their basic survival; people have limited access to basic services.
- *Resistance to reform and an absence of change agents* was identified as stemming from several root causes including apathy – there is an acceptance of the status quo and a lack of impulse or incentive to create change; fear - of losing their wealth, power or privileges; habit – people have lived with and now accept the old way of doing things; lack of incentive to change – the existing laws are weak so power holders know they can continue to conduct their activities as before without facing any consequences.
- The inability of the different sections of the government, and the government and the people, to work together was seen as a challenge to the development of the rule of law. People feel that the government is not actually promoting rule of law, despite what is said, because those in power have benefited from the laws and the system for the past decades. Confidence building initiatives are needed to build trust and to encourage cooperation and participation - for example, by taking steps such as providing security to witnesses.

Taunggyi and Ngaung Shwe:

Many of the same rule of law challenges were raised in the two workshops in Shan State that had also been identified in Mon State. These included:

- *Lack of awareness* of laws, rights and responsibilities by the people and a need to educate everyone about the rule of law.
- *Corruption* at all levels and within all sectors of society. Corrupt officials restrict freedom of expression.
- Power holders use the laws to their own *benefit*; many laws only protect the administrative level and the decision makers. There is a need to amend laws that do not protect everybody and to abolish laws that do not reflect the reality of the current context; *lack of equality before the law*.
- *Lack of capacity and knowledge* by State government officials about issues of justice and security;
- Local ward and village administrators pass decisions without knowledge of the applicable law. These decisions can lead to further unrest, undermining peace and security. Administrators and those holding the judiciary power in the rural areas are taking advantage of a poor level of education among the local people who do not know their rights or how to seek recourse to justice for decisions they do not agree with.
- The *Constitution* does not reflect the wishes of the majority and certain provisions need to be amended.

- The formal *justice system* should be fair, open and transparent and free from interference from the Executive.
- *Lack of enforcement* of the laws – people are not punished for breaking the law.
- *Witnesses* fearful to testify to the truth.
- *Armed groups and ethnic conflicts* create instability and a lack of peace in the border areas; there is daily insecurity and fear within the population of the military, police, security people and armed groups; there is a failure of the authorities to manage the many layered conflicts at a grassroots level and at the same time there is a lack of clarity about who is responsible for rule of law issues in these areas.
- *Lack of transparency* within government, lack of respect between the people and the government and a failure of the government to treat all person fairly.
- *Lack of public participation in law-making* - communities elect representatives who sit in Parliament but beyond that the people have no say in the law-making process. Parliamentary discussions should be open and transparent, people should be able to observe and listen to what is being discussed at the State level parliament.
- *Impunity* of the military and the police who commit crimes - the authorities fail to take any action, there is no recourse to justice for victims.
- *Poverty and a weak education system.*

Local challenges were also raised related to illegal gambling and narcotics and the failure of administrators and the police to equally enforce laws against those guilty of illegal activities.

A number of groups raised challenges that related very specifically to issues at Inle Lake around land tenure and usage, and natural resources. Concerns related to:

- The arbitrary confiscation of farmland by the government (eg: for hotel zones), military, armed groups and cronies (with the aid of local government);
- The lack of public participation and transparency by the government in how hotel zones are defined and negotiated;
- Unfair and inadequate compensation (below market value) to farmers and villages for confiscated land e.g.: the Latpadaung copper mine
- The nationalising of religious sites, including Buddhist monasteries, for government defined hotel zones;
- Lack of adequate legal protection for farmers land ownership and usage rights – reference was made to the fact the Constitution grants the Union ultimate ownership of all lands and all natural resources above and below the ground, water and in the atmosphere in the Union. According to the Constitution the Union shall permit citizens right of private property in accordance with the law (article 37).
- The need for an equal ratio for the extraction and utilization of natural resources across the different states and regions;
- The failure of the government to address development of the states, instead only supervising the extraction and utilization of state-owned natural resources;

- The need to protect the needs and desires of the local ethnic people falling within government defined Inle hotel zones and to protect the local heritage of Inle lake, namely;
- The need to protect cultural heritages and buildings related to local ethnic people from privatization;
- The illegal extraction of timber from state-owned forests.

Ethnic Roundtable, Yangon:

Participants identified a number of rule of law challenges, many of which had been identified in the other fora. They reiterated a concern that there is a lack of presence of international organisations in ethnic states and that trainings and workshops around promoting rule of law tend to only happen in Yangon and Mandalay.

Other challenges included:

- the impunity of the military;
- vagueness within the Constitution regarding law-making powers of the Union and states;
- the absence of an independent judiciary;
- corruption;
- the lack of qualified judges, lawyers and police;
- barriers to access to justice including financial cost, corruption, delays and backlog of cases;
- Muslims do not access the justice system because the community operates outside of the system and the police do not arrest them;
- the lack of legal awareness – people do not know their rights and responsibilities or those of the government;
- the lack of respect between the people and the government;
- laws are slow to be implemented because the rules and regulations that allow a law to be put into practice are not defined;
- absence of fair elections – members of parliament are not representative of the people;
- a historically based mind set of fear which holds people back from pushing forward with demands for change, for example, in the past, any meeting with a foreigner had to be reported to the authorities;
- lack of public participation and transparency in law-making.

Annex III: Identified Justice and Security Actors

Mawlamyaing:

Participants identified a range of actors including: the government, parliament, prisons, the military, and the judiciary. The legislature, witnesses, the people (citizens), police, lawyers, village administrative courts, NGOs and CSOs, religious leaders, electoral commissions, political parties

Nyaung Shwe:

Justice and security actors identified as being involved in promoting and upholding the rule of law included: the police, media, civil society, community representatives, prosecutor, the people, local administrators, the state, political parties, respected elders, state leader, religious leaders, lawyers, ethnic leaders.

Taunggyi:

Key justice and security actors were identified as being: the government, the people, the legislature, Human rights commission, armed groups, local and state government, traditional elders and respected people, military, police, religious leaders, ethnic leaders, human rights organizations, the Judiciary, the courts, the media, local administrators, forensic doctors, commercial and trade organizations, university teachers and students, the business community, prisons, political parties, civil society (NGOs and CSOs).

Ethnic Roundtable:

Ethnic roundtable participants identified the following justice and security actors: police; media; judiciary; advocacy; people; the government and opponent groups; state leaders; religious organizations; and ethnic organizations.

Annex IV: USIP Rule of Law Burma/Myanmar Trip Team Members

The USIP Rule of Law Team comprised of the following members:

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