



# **In their own voices:**

## **Women's experiences, roles and influence in Community Based Dispute Resolution and Mediation in Myanmar**

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## Acknowledgments

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# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b>	5
<b>INTRODUCTION</b>	9
Community Based Dispute Resolution and Mediation: the evidence so far	9
Community Based Dispute Resolution and Mediation and Gender Equality	9
Objectives of this study	10
<b>METHODOLOGY</b>	11
Approach and sources of data	11
Data collection	11
Sampling methodology	12
Data collection and analysis	12
Ethical issues	13
Limitations	13
<b>DEFINITIONS</b>	14
<b>FINDINGS</b>	16
Women's experiences of different types of dispute and the CBDRM process	16
The types of dispute reported by women	16
Women's access to CBDRM processes	17
Women's perceptions of fairness in CBDRM processes and outcomes	20
Understanding the concept of fairness	20
How women perceived the fairness of CBDRM processes and outcomes	21
Gendered roles, decision making and influence in CBDRM processes	23
Family Members	23
Community Level Actors	24
Village Leaders	26
Civil Society Organizations	28
<b>CASE STUDIES</b>	30
Case study 1: Domestic Violence in Shan State	30
Case study 2: Land Dispute with a neighbour in Mon State	30
Case study 3: Trafficking and forced labouring in illegal drugs selling in Kayin State	31
Case study 4: Micro credit loan disputes with domestic violence in Mandalay Region	32
Case study 5: Influencing disputes in Shan State	33
<b>LEARNING AND RECOMMENDATIONS</b>	35
References	38

## Acronyms and abbreviations

<b>CBDRM</b>	Community Based Dispute Resolution and Mediation
<b>CBO</b>	Community-Based Organisation
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organisation
<b>EAO</b>	Ethnic Armed Organisation
<b>FGD</b>	Focus Group Discussions
<b>GAD</b>	General Administration Department
<b>GBV</b>	Gender Based Violence
<b>IBN</b>	Interest Based Negotiation
<b>IDP</b>	Internally displaced persons
<b>KII</b>	Key Informant Interview
<b>KNU</b>	Karen National Union
<b>KWO</b>	Karen Women's Organisation
<b>MWAF</b>	Myanmar Women's Affairs Federation
<b>MWO</b>	Mon Women's Organisation
<b>NGO</b>	Non-Governmental Organisation
<b>NMSP</b>	New Mon State Party
<b>W/VTA</b>	Ward/Village Tract Administrator

# EXECUTIVE SUMMARY

Myanmar's transition is at a critical point with the social contract between citizen and state shifting, latent and active sub-national conflicts continuing, and the peace process mired in process rather than political dialogue. In this context, inter- and intra-communal conflicts can escalate into violence and quickly take on state/regional or even national dimensions when the necessary conditions for peace - justice, trust, and stability - are not present. Women and girls suffer disproportionately from the impacts of armed conflict, experiencing death, torture, sexual and gender-based violence, conflict-related sexual violence, labour exploitation and trafficking (Kamler, 2015), as well as constrained educational opportunities and poor health (AGIPP, 2015) and specific challenges in accessing justice or community-based resolution of disputes (Justice Base, 2016; UN Women, 2016). Women's participation in conflict resolution process at the national and community level has been very limited.

In the context of inter- and intra-communal conflict, Community Based Dispute Resolution and Mediation (CBDRM) mechanisms are increasingly used to provide negotiated resolution to local disputes. There is a growing body of evidence on how community level disputes in Myanmar are resolved, and emerging evidence on women's experiences and perceptions on CBDRM. Much of the existing data is not disaggregated nor does it always reflect the different interests, needs and priorities of women and men, and there are few existing interventions that address the gendered aspects of CBDRM mechanisms themselves.

Mercy Corps implements programmes to strengthen the mediation skills of civil society leaders, religious leaders, ethnic leaders and government officials and has recognised that, despite progress over the last five years, understanding of women's experiences, roles and influence in CBDRM has been limited and an improved understanding will help adapt their programmes to ensure fair outcomes for all women and men. The overall objective of this study is to contribute to the evidence base on gender and CBDRM in Myanmar, so that women's experiences and perceptions, and a better understanding of women's roles and influence, can better inform programme design and implementation. The study uses a qualitative approach to explore women's experiences, roles and influence in CBDRM processes from the perspective of women themselves and from gatekeepers to their involvement. The locations for the research were identified by Mercy Corps based on their programme locations in southern Shan, Mon, and Kayah States and Mandalay Region. Between September and October 2019, a total of 142 key informant interviews took place, 53 at township and 89 at village level, as well as 51 focus group discussions with a total of 339 women and 245 men interviewed. Respondents included women involved in disputes as individual disputants and as mediators, community leaders, community justice providers and justice facilitators, and key actors at the township level such as service providers, women's organizations, CSOs or legal aid groups in the target communities.

## Key Findings:

### Women's experiences of Community Based Dispute Resolution and Mediation Processes

- › Women reported being involved in a range of types of disputes, not just those that are considered in the private or domestic sphere. They described disputes related to land, inheritance, the impact of mining on their community, money-lending, trafficking, alcohol abuse and drugs, as well as domestic violence and marital disputes with their experiences varying depending on the type of dispute
- › The type of dispute affected the route women took to resolve their disputes as women are more constrained by social norms than men. Domestic violence and relationship issues were considered to be private and should be resolved within the family if possible, while women who had land disputes were more likely to take their case further.
- › Most women were only motivated to take their case to a dispute resolution process when they had reached breaking point or could no longer tolerate the situation, reporting that they feared voicing their concerns, are more constrained by social norms, have less power and influence, and do not know what other options are available.
- › Most women reported that they wanted their dispute resolved at local levels as they face different barriers in bringing the case from the family to township. Compared to men women had additional barriers related for preferring CBDRM including cultural perceptions around female travel and transportation issues, language barriers, levels of education, limited access to information. Only a few women

reported progressing their disputes at township level, and those that did so had family support, the confidence to speak out, awareness of their options and the financial resources to use more formal justice mechanisms.

- › Village rules and customary practices can have a negative impact on dispute resolution for women at community level.
- › Social norms such as arh nah deh, the concept of hpon, and norms related to women's modesty or their ability to travel alone affected women's access and influence over CBDRM
- › Despite this, in many areas the majority of village leaders and VTAs think that women do not have any barriers in dispute resolution.

### Women's Roles in Community Based Dispute Resolution and Mediation Processes

- › At the community level different women play different roles in mediation such as accompanying women disputants, as facilitators, decision makers, connectors and communicators to other justice actors at the community and township level.
- › CSOs tend not to be involved directly in mediating disputes at community level, rather they refer women to services and legal justice if their case reaches township level. In some cases, there are women members of township level CSOs who are involved in mediation at the village level though the township CSO does not have a direct role. Unlike VTAs, CSOs have no legal or customary power to bring disputants together or legitimacy in making decisions in a village.



## Perceived Level of Women's Influence in Community Based Dispute Resolution and Mediation Processes

- › Men are perceived as more influential in CBDRM processes unless women are “brave, confident and educated” and, even then, their decisions are continuously challenged by men. The few women who are mediators are VTAs or 100 HH leaders, are educated, well-connected and often related to an ex-VTA or village leader.
- › Most women disputants mentioned they would prefer women mediators and believe having more women mediators will support fairer outcomes, especially in domestic violence cases. However, Women leaders are not always perceived as supportive of women disputants, and women do not always support other women becoming mediators.
- › However, Women's influence is affected by their age, ethnicity, religion, lower social status, their lack of economic power, and their lack of representation in public life.
- › At household level, the head of the household, (who is usually male) acts as a gatekeeper to how disputes are mediated. Women who are senior in the household, or female breadwinners, can also have a role in mediating disputes within the family and between families and can also act as gatekeepers to women's access to CBDRM.

## Perception of Fairness of Community Based Dispute Resolution and Mediation Processes and Outcomes

- › Different actors had different understandings of what fairness means in terms of CBDRM processes and outcomes. For women disputants, being able to voice issues and concerns during the process was perceived as related to fairness, and their perceptions of the fairness of the outcomes were based on what they believed were the range of possible outcomes. Most CSO leaders think that CBDRM is not fair for women and that only legal justice is fair and effective.
- › Women often appear to consider the outcomes of CBDRM fair even if they were not satisfied with the results and many women felt they needed to tolerate decisions even if they continued to be in physical danger.
- › For village leaders and VTAs, family cohesion and village harmony, rather than women's rights or fair outcomes for women, are the priorities when making decisions. Most CSO leaders, however, think that CBDRM is not fair for women and that only legal justice is fair and effective

# KEY RECOMMENDATIONS

## To improve women's experiences of Community Based Dispute Resolution and Mediation processes

- › Ensure programs are designed based on local context analysis that demonstrates how gender intersects with other factors and explores how power dynamics impact CBDRM. This should include for example, a nuanced understanding of who has access to CBDRM process at what stage of process and who has power to make decisions.
- › Adapt CBDRM processes interventions to ensure they are responsive and relevant to gender dynamics per type of dispute. For example, interventions aimed at ensuring women's meaningful participation and fair outcomes for gender based violence disputes will significantly differ from CBDRM interventions aimed that meaningfully engage women to resolve land issues.
- › More specifically, review and assess whether Interest-based mediation content and methodology are an appropriate mechanism for dealing with sexual and gender-based violence cases given the tension between processes supporting a negotiated result, women's rights and survivor centered justice.

## To create processes and ensure outcomes that are fair for women

- › Consider establishing structures/ procedures that mandate the participation of women justice facilitators and mediators, ensure women's voices in CBDRM processes, and support outcomes that protect women from violence.
- › Provide guidelines, procedures and capacity building on gender-responsive CBDRM for male and female mediators to support fairer processes and outcomes for women.
- › Work with male gatekeepers including VTAs, 10/100 heads of household and religious leaders to challenge social norms and increase their support for gender responsive mediation of disputes.
- › Engage men and women at the household and community level to highlight positive aspects of current social norms that can positively impact

fair CBDRM outcomes for men and women. This for example can include highlighting aspects of Karen matriarchal culture or Buddhist concepts of saytana (good intentions) and metta (loving kindness) that might support fairer processes and outcomes.

## To increase women's meaningful access, participation and influence over CBDRM

- › Consider expanding the targeting of CBDRM program participants beyond "mediators" to include other female community members or groups that play significant roles in CBDRM. These may include the head of women's groups for village welfare, single women's groups, active women who have connections or education such as husband who were ex-village leaders, relatives of the current VTAs and 100 HH, school teachers, nursery teachers, or members of Myanmar Women Affairs Federation (MWAF) in the village.
- › Increase women's capacity and confidence to take on roles in CBDRM by building their capacity around mediation and negotiations skills, leadership skills and exposure to laws and positive role models. Work with local women's groups to offer opportunities for women to take on public roles, experience community decision-making structures and processes, and develop skills and confidence in dealing with community leaders and figures of authority.
- › Create networking spaces for influential female community members and local women's groups to develop skills and confidence in dealing with key gatekeepers and figures of authority in order to support increased female influence in CBDRM and potentially more women take on roles in CBDRM in future.
- › Consider targeting the household level in CBDRM programs, including heads of households and other family members to build their awareness of gender issues related to community disputes. This could help support women have more positive experiences of dispute resolution, potentially with a specific focus on sexual and gender-based violence and positive masculinities.



# INTRODUCTION

## Community Based Dispute Resolution and Mediation: the evidence so far

Myanmar's transition is at a critical point with the social contract between citizen and state shifting, latent and active sub-national conflicts continuing, and the peace process mired in process rather than political dialogue. The crisis in Rakhine State and ongoing conflict in Kachin and northern Shan States, for example, affect communities' ability to live peacefully together. In this context, inter- and intra-communal conflicts can escalate into violence and quickly take on state/regional or even national dimensions when the necessary conditions for peace - justice, trust, and stability - are not present. Women and girls suffer disproportionately from the impacts of armed conflict, experiencing death, torture, sexual and gender-based violence, conflict-related sexual violence, labour exploitation and trafficking (Kamler, 2015), as well as constrained educational opportunities and poor health (AGIPP, 2015) and specific challenges in accessing justice or community-based resolution of disputes (Justice Base, 2016; UN Women, 2016).

Recent research describes the history of the development of the Myanmar justice system and how the legacy of colonial rule and the current political settlement have influenced the plural systems that currently exist (Kyed, 2018; Justice Base, 2016; MyJustice, 2018; Saferworld, 2019; UN Women, 2015). While the 'formal' justice system relates to, for example, courts, police stations, ethnic administrations, and ward administration offices, community based dispute resolution and mediation (CBDRM) is a more 'informal' mechanism increasingly being used to facilitate a negotiated resolution to an intra- or inter-community dispute. As Justice Base (2016) points out the formal justice system remains the "yardstick" measuring commitment to human rights and international legal standards, however it tends not to "touch the lives of women" and relatively little is known about the numerous non-state, informal mediation and dispute resolution mechanisms. Justice Base (2016) also found that the lines between what participants referred to as "customary law," "informal law," "culture law" or "village law" would frequently blur. Similarly, MyJustice (2016) found that people do not view the justice system as divided into separate 'formal' and 'informal' systems, rather there is "a system made up of a constellation of different justice providers" (p29). CBDRM mechanisms and processes vary widely depending on the context however they all appear to have in common that they happen locally, involve a 'neutral' third party, usually involve some form of mediation, and can involve imposing penalties (Kyed, 2018).

## Community Based Dispute Resolution and Mediation and Gender Equality

There is evidence emerging from broader studies on justice and on peacebuilding in Myanmar, of women's experiences, roles and influence in these CBDRM mechanisms and processes. However, there is limited evidence and few existing interventions that address the gendered aspects of CBDRM mechanisms themselves. Generally, leadership at the local level, including within administrative structures, remains dominated by male 'gatekeepers' who resolve community-level disputes through informal, traditional justice practices that leave women's voices unheard and their experiences and perspectives undervalued (Justice Base, 2016). This is also reflected in regional and national-level political dialogues, where women's voices also often remain unheard (AGIPP, 2018). Socio-cultural and religious norms portraying women as inherent 'followers', women's time burden and caregiving constraints, lack of experience in mediation and negotiation processes and prioritization of community harmony over individual justice outcomes contribute to their limited roles and influence in CBDRM (Justice Base, 2016).

Existing research also demonstrates that there are few women mediators or justice facilitators which affects the likelihood of women taking a case forward, particularly cases of sexual or domestic violence, although women's roles vary depending on the context (Kyed, 2018; Saferworld, 2019). Most women and men in Myanmar appear to share notions that justice involves treating people equally, with fairness and respect, and that vulnerable people should be taken into consideration although the law is seen as a tool to maintain order, rather than promote a fair and just society (MyJustice 2018). Despite seemingly shared notions of fairness, research by UN Women (2016) shows that many women are dissatisfied with customary mediation practices and outcomes. Much of the existing data, however, is not disaggregated nor does it always reflect the different interests, needs and priorities of women and men. There is however common acknowledgment of the greater need to incorporate women's voices in community-based approaches to peacebuilding.

**"While men have their own positive and negative gender-specific experiences of the justice system, in general, women are more likely to be marginalized from justice mechanisms. Given women's extremely unequal access to power, resources, information and discourse, one cannot assume that gender neutral policies and programmes will equitably benefit men and women"**  
UNDP 2007

## Objectives of this study

Mercy Corps implements programmes to strengthen the mediation skills of civil society leaders, religious leaders, ethnic leaders and government officials in Myanmar. These programmes apply a collaborative approach to mediation and problem-solving to strengthen the capacities of participating leaders to communicate constructively and resolve disputes effectively. Mercy Corps has recognised that, despite progress over the last five years, understanding of women's experiences, roles and influence in CBDRM has been limited and they are yet to adapt their programmes to take them into account. This study aims to contribute to the broader evidence base and to help Mercy Corps adapt their programmes accordingly.

The overall objective of this study is to contribute to the evidence base on gender and CBDRM in Myanmar, ensuring women's experiences and perceptions, and a better understanding of women's roles and influence, inform programme design and implementation. Specifically, this involved exploring:

1. The nuanced experiences of women disputants, mediators and justice facilitators, including their perceptions of fairness of CBDRM;
2. The roles women play in CBDRM, and their perceived level of decision making and influence levels over these processes;
3. The extent to which current CBDRM practices prioritize the voice and agency of women over community harmony practices;
4. The perception of gatekeepers around women's roles and their experience of CBDRM processes.
5. Whether women's experience, influence and perception of local justice processes in Myanmar vary based on the type of community-level dispute.

This study used a qualitative approach to explore women's experiences, roles and influence in CBDRM processes from the perspective of women themselves and from gatekeepers to their involvement. The locations for the research were identified by Mercy Corps based on their programme locations in southern Shan, Mon, and Kayah States and Mandalay Region. A total of 142 key informant interviews took place, 53 at township and 89 at village level, as well as 51 focus group discussions involving 339 women and 245 men. Respondents included women involved in disputes as individual disputants and as mediators, community leaders, community justice providers and justice facilitators, and key actors at the township level such as service providers, women's organizations, CSOs or legal aid groups in the target communities.

# METHODOLOGY

## Approach and sources of data

This study uses a qualitative approach to analyse women's experiences, roles and influence in CBDRM processes from the perspective of women themselves, and from gatekeepers to their involvement in CBDRM either as disputants or as mediators. The study was designed on the assumption that community based dispute resolution and mediation processes in Myanmar have evolved based on the political settlement, the formal justice system, social and cultural norms and practices, and the gatekeepers who make decisions in specific contexts. Other research provides excellent analysis of the current political settlement and the formal justice system; this study aims to use a gender lens to specifically explore women's experiences, roles, and influence in CBDRM in Myanmar. Sources of data include:

The key questions were developed at a participatory workshop with Mercy Corps staff. An interview protocol and four questionnaires were developed for key informant interviews to be undertaken with CSOs, community leaders, women mediators and women disputants,

members of parliament, ethnic armed organisation (EAO) leaders, government officials, and focus group discussions with communities. A training was provided on the methodology where the questionnaires were also revised based on feedback from the participants. Mercy Corps also provided training for enumerators on 'guidelines for dealing with sensitive cases and asking sensitive questions'.

### Desk review

Review of existing research and reports on women's experiences, roles and influence in CBDRM in Myanmar and beyond

### Primary data collection

Focus group discussions and key informant interviews with women disputants and mediators, village leaders, community members, W/VTAs, and CSOs

### Case studies

Causal process tracing to tell five women's stories of their experiences of different types of dispute

## Data collection

### Sample selection

The locations for the research were identified by Mercy Corps based on their programme activity locations (but not limited to villages where they have a presence) in southern Shan, Mon, and Kayin States and Mandalay Region.

Two townships were identified in each State/Region based on the location of Mercy Corps programmes. Two villages were chosen in each township with three criteria guiding the choice of village: firstly the aim was to identify urban and rural areas where Mercy Corps has already built trust and established good working relationships; secondly the villages were to be between 50 – 100 households; and thirdly, where possible, there should be a mix of people with different characteristics including age, ethnicity, religion, disability, income etc. The study aimed to include:

- › women involved in disputes as individual disputants and mediators,
- › women and men who have roles in CBDRM such as community leaders, community justice providers and justice facilitators,
- › key actors at the township level such as service providers, women's organizations, CSOs or legal aid groups in the target communities.



STUDY LOCATIONS

## Sampling methodology

A mix of targeted and snowball sampling was used to identify interview subjects in each of the target areas. Research in each field area began with focus groups discussions with community members in the targeted villages where they described the CBDRM processes used in their communities, the types of issue resolved through CBDRM, the actors involved in disputes, and perceptions of fairness. Key informant interviews took place with CSO leaders, Ward and Village Tract Administrators, and other gatekeepers of CBDRM processes. During FGDs and individual interviews, respondents were asked to identify women who had roles as mediators and women who had experienced CBDRM. Five in-depth case studies were undertaken using a causal process tracing approach which, by unpacking the steps taken by women disputants, aimed to help understand women's experiences and the choices and options available to them.

## Data collection and analysis

The National Co-Lead led the field work was supported by three field coordinators who were identified based on their experience and knowledge of the local context in each State/Region. They managed four teams of three enumerators comprised of Mercy Corps staff. Each team covered one State/Region spending ten days collecting data at township and village levels. Each team checked in with the National Co-lead on a daily basis by phone and on messenger when necessary. The questions were translated into Burmese and translators were arranged in southern Shan, Mon and Kayin States. A total of 142 key informant interviews were undertaken (53 at township level and 89 at village level) and 51 focus group discussions.

**Table 1: Data collection**

State/Region	Township	No. of KIIs	Village/ Ward	No. of KIIs and FGDs
Shan State	Taunggyi Township	9 KIIs	Kyaut Ni Village	4 KIIs, 3 FGDs
			Tha Yat Pin Hla Village	4 KIIs, 4 FGDs
	Kalaw Township	4 KIIs	Thitahl Thit Village	2 KIIs, 3 FGDs
			Taung Po La Village	3 KIIs, 3 FGDs
Mon State	Mawlamyine Township	5 KIIs	Gwe Gone Village	5 KIIs, 0 FGD
			Pha Aunt Village	5 KIIs, 1 FGD
	Bilin Township	5 KIIs	Thae Phyu Chaung Village	8 KIIs, 4 FGDs
			Yoon Da Lin Kone Village	7 KII, 4 FGDs
Kayin State	Hpa-An Township	6 KIIs	Bin Gyi Village	7 KIIs, 4 FGDs
			Oha Thabin Village	9 KIIs, 4 FGDs
	Hlaingbwe Township	3 KIIs	Dine Pya Village	8 KIIs, 4 FGDs
			Khun Be Village	6 KIIs, 4 FGDs
Mandalay Region	Chanayethazan Township	7 KIIs	Kinsanamahe Ward	3 KIIs, 3 FGDs
			Kyanmaryae Ward	4 KIIs, 2 FGDs
	Patheingyi Township	14 KIIs	Manawmyama Village	8 KIIs, 4 FGDs
			Myauk Tatainshay Village	6 KIIs, 4 FGDs

## Ethical issues

**Informed and voluntary consent and confidentiality:** all participants were informed about the nature and objective of the research, the participants' role, the identity of the researchers, and how the results will be published and used. All individuals were able to choose whether to participate and whether to have their identities anonymised. All those who participated provided oral consent.

**Validity and interpretation:** The questionnaires were translated into Burmese and translation into local languages was arranged in each State/ Region. Given the subjective nature of qualitative data and the risk of misinterpretation, efforts were also made to triangulate data with other sources and use direct quotes from participants wherever possible.

**Conflict sensitivity:** The study was undertaken in conflict affected areas such as Mon State and Kayin State and some of the issues at the heart of disputes in these areas – for example land, drugs, and sexual violence – are potentially highly sensitive. Understanding the specific context in each area was important to mitigating the risks. Mercy Corps staff were trained on dealing with sensitive cases and asking sensitive questions, and the study was undertaken in contexts known to the enumerators and on a subject they are familiar with. Townships currently experiencing conflict were excluded to ensure the safety of enumerators and participants. The enumerators ensured informed and voluntary consent and no participants are identifiable in the final report.

## Limitations

**Generalising from the data:** The study is limited to eight townships in four states/regions and the choice of location was based on Mercy Corps programmes. The data gives an indication of likely trends and patterns however caution should be taken with generalising across Myanmar.

**Potential selection bias:** The snowballing methodology to identify key informants was chosen to attempt to eliminate selection bias, for example in comparison with asking VTAs to identify key informants. However, given the lack of time to mobilise communities, in some cases communities were mobilised through VTAs. This potentially led to biases in selecting the disputants whom they know, and who they thought were satisfied with dispute resolution processes led by them.

**Potential interviewer bias:** The Mercy Corps enumerators were mostly Myanmar men who will, as all interviewers do, bring their particular biases to the research. There was not an opportunity to construct a team with a balance of ages, ethnicities and genders. To mitigate the effects of this, Mercy Corps has been undertaking gender training with staff. In addition, the Co-Lead managing the field work and the three coordinators were all women. The coordinators did all the in-depth interviews with women disputants.

**Accessibility and timing:** Flooding in Mon State and Mandalay Region caused challenges in transportation and mobilising respondents. Major floods in Mawlamyine led to the data collection being delayed and FGDs only took place in one village. Some communities were also preparing paddy fields for farming at this time. Permissions were not available in time so interviews could not take place with, for example GAD and DSW, whose perspectives would have enriched the findings.

**Timescales:** The inception period for the study was rushed to accommodate the use of Mercy Corps staff whose contracts were ending. Only 10 days were allowed for enumeration which limited the ability of the teams to build trust in communities and particularly with women disputants

# DEFINITIONS

**Access to justice:** “the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. There is no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system” .

**Community based dispute resolution and mediation :** a mechanism for facilitating a negotiated resolution to a dispute by a third party in a given local context. The mediator, who acts as a supposedly neutral third party, assists the parties to a dispute to reach a mutually agreeable settlement. However, in CBDR, mediation may also be combined with aspects of arbitration, including enforcing penalties and using witnesses. The word ‘community’ signals that dispute resolution takes place within a relatively small geographical area and involves parties who live within that area. Such an area may be defined by administrative and/or customary boundaries, like village and ward (Kyed 2018, p20).

**Dispute:** a case or problem where two or more parties disagree on a matter, which may involve criminal acts (according to the law) and which may be reported to or resolved by a third party (Saferworld, 2019).

**Dispute resolution:** the practice of resolving differences between two or more parties, which is mediated by a third party (a justice practitioner). Resolutions may draw on legal principles (i.e. codified law or rules), oral norms and rules (customary, religious, etc.) or a combination of the two (Saferworld, 2019).

**Interest-Based Negotiation:** is a collaborative problem-solving approach that provides a framework for analyzing the interests of all parties and generating creative solutions to satisfy those interests.

Key principles include using objective criteria and building good communication and relationships between the disputants so they can effectively and sustainably solve the problem (Mercy Corps).

**Gatekeepers:** people who serve as decision-makers in resolving disputes, influence whether women take their disputes to a CBDRM and determine who is involved in making decisions.

**Gender analysis:** highlights the differences between and among women, men, girls and boys in relation to their access to resources, opportunities, constraints and power in a given context (SIDA 2017).

**Gender equality:** The equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men (UNDP, 2007)

**Gender equity:** The process of being fair to men and women. To ensure fairness, measures must often be put in place to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field. Equity is a means— equality is the result (UNDP, 2007).

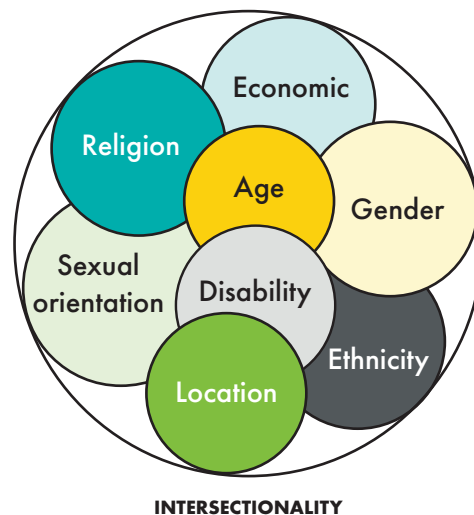
**Gender justice:** the protection and promotion of civil, political, economic and social rights on the basis of gender equality. “It necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for women, men, girls and boys and adopting gender sensitive strategies for protecting and promoting them” (UNDP 2007, p). “Increasing women’s access to justice, be it formal or informal, hinges on removing economic, political and social barriers to participation, as articulated by the gender justice agenda” (UNIFEM & ILAC, 2004).



**Intersectionality:** (see Figure 1) refers to ‘the complex, cumulative way in which the effects of different forms of discrimination combine, overlap, or intersect’. Individuals have multiple facets to their identities – age, ethnicity, sex, religion etc. – which affect how they are included or excluded. These factors combine in ways that multiply the effects of each and can change over time and depending on the context.

**Justice facilitators:** these include, for example, relatives, educated persons, monks, armed actors (individuals), astrologers, fortune-tellers and to a lesser extent political parties and CBOs, who are used for advice and support before and during a CBDRM process (Kyed, 2018).

**Legal pluralism:** a context in which a range of legal systems, norms, rules, institutions, laws or methods of resolving dispute coexist. For example, legal institutions such as courts, police stations and ward administration offices are part of the formal system, while the informal system comprises any community-based mechanisms used to resolve disputes, such as religious centres, councils of elders or ethnic leaders and community-based organizations. They can form numerous, supportive pathways to justice, or enshrine harmful legal practices that discourage access for women, the poor or minority groups, or destabilize the application of rights-based law (Justice Base 2016).



**Social exclusion:** The process by which certain groups are systematically disadvantaged because they are discriminated against on the basis of their ethnicity, race, religion, sexual orientation, gender, age, disability, HIV status, migrant status, economic status, or where they live. These characteristics can intersect to multiply the effects of discrimination.

**Social inclusion:** The process of improving people’s ability to participate in society in a specific context through enhancing capabilities and opportunities, supporting voice, choice and control, and respecting human rights.

# FINDINGS

## Women's experiences of the Community Based Dispute Resolution and Mediation process

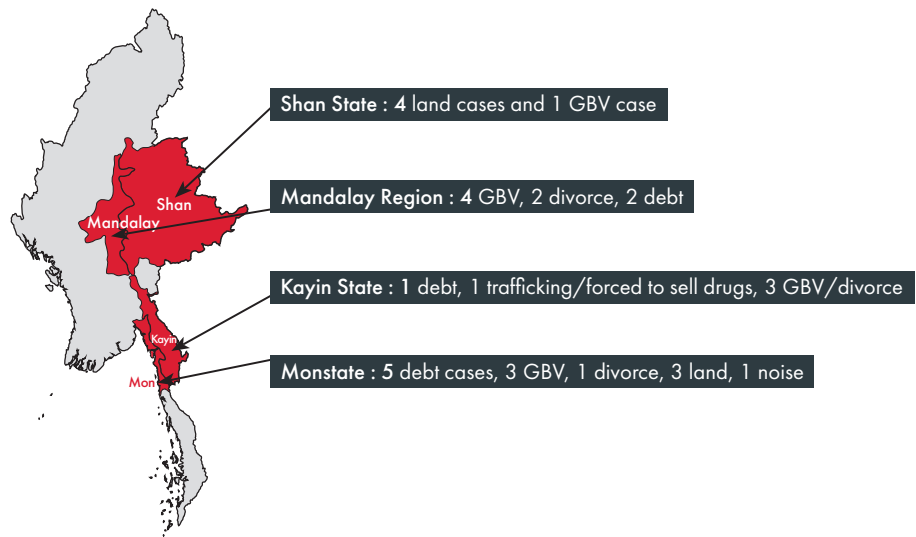
### The types of dispute reported by women

Women reported being involved in a range of types of disputes, not just those that are considered in the private or domestic sphere. Women disputants described disputes related to land, inheritance, the impact of mining on their community, moneylending, trafficking, alcohol abuse and drugs, as well as domestic violence and marital disputes. In Shan State for example, women described how they became involved in land issues and gender based violence. In Kayin State, disputants described cases relating to debt and moneylending, gender-based violence (GBV), and one woman described being forced to sell drugs for her mother-in-law. In Mon State women described land disputes with family and neighbours, illegal drugs selling, domestic violence and divorce linked to alcohol abuse, and debt. In Mandalay Region women described disputes linked to domestic violence, debt, and marital strife. The kinds of dispute women reported being involved in were largely the same as the disputes focus group members described as commonly taking place in their communities and not just related to "women's issues" such as domestic violence and divorce.

While women are involved in a range of disputes, sexual and gender based violence and how it is dealt with through CBDRM, generated the most detail from women disputants. GBV cases are the most reported by respondents.

Out of 30 case studies, 11 are specifically categorised as GBV, and 5 cases on debt, trafficking/forced to sell drugs and land are also related to GBV. Women described cases of physical violence and psychological abuse, often linked to alcohol abuse. A few domestic violence cases were more complex for example, a woman in Kayin State described a case of domestic violence that also involved a land dispute when her husband sold their land. Perceptions that disputes can be separated into domestic or private and public disputes may not be a useful distinction. Case study 1 in section 5 tells the story one woman's experience of bringing a domestic violence case to community based mediation in southern Shan State and case study number 4 describes a domestic violence case in Mandalay that is also linked to a dispute over debt.

While evidence on women's experiences of seeking resolution for different types of dispute is limited in general, there is more evidence on women's experiences in resolving disputes relating to gender based violence. The emphasis in this study on domestic violence is echoed in the existing research, for example from Gender Equality Network (2015) and Women's League of Burma (2016). At the same time MyJustice also found that domestic violence is highly underreported, as women will only tell someone if the violence is severe as a result of the shame and loss of dignity they feel as individuals and for their families (MyJustice, 2016). This means that there are likely many more undocumented cases of domestic violence.



Several women described land and inheritance disputes with neighbours, the military, ethnic armed groups and the private sector, particularly in Shan, Kayin and Mon States. One woman in Southern Shan State became involved in a land dispute with her neighbour; another described how she had 100 acres of land grabbed by the Myanmar military; and a woman described being involved in a land grabbing case with a private sector company where a factory and mine started to cause the death of livestock and people in the village to become sick. According to respondents in Shan State, men usually do not want to get involved as disputes are considered shameful so women are asked to become the key actor in disputes and have to make all the effort to get the land back as this is the only source of livelihood for the whole family. In Mandalay, women narrated that women are asked by men to go to the frontline of organised protests on land issues as women are less likely to be treated brutally by the police or receive as severe sentences. Women reported being instructed by male strike leaders to take off their longyi if they are about to be arrested by the police as they will not arrest a naked woman.

Women also described disputes relating to debt, either to moneylenders or relating to savings and loans projects with the burden of debt falling to women within the household. Micro finance firms mostly provide loans to women as women are perceived to be more credit worthy so women are often the key actors in debt-related disputes, even though their husbands may have guaranteed or asked their wives to take the loan. There were a number of cases of individual women not being able to repay the loan and saving groups for their part of a micro-finance loan. When the loans are not paid back in time, women, not their husbands, are the ones brought by the micro credit company to the VTAs as they are recorded as the loan takers who are responsible for paying loans back. Case study 4 in section 5 tells the story one woman's experience of taking a debt issue to community based mediation. Other cases involved moneylenders who charged high interest rates, with one woman in Mon State describing how she risked losing her home and that the moneylender shamed her in the community.

## **Women's access to community based dispute resolution and mediation processes**

The type of dispute affected the route women took to resolve their disputes as women are more constrained by social norms than men. Domestic violence and relationship issues were considered to be private and should be resolved within the family if possible and, if not, then 100 household leaders, village leaders and VTAs were the most common mediators. Only one woman described how she took her case directly to the police. Given the role of the head of household as decision-maker about private or domestic matters and how social norms shame women and prevent women from travelling, demanding their rights, and challenging decisions, women's choices are constrained particularly in GBV cases.


Women who had land disputes were less likely to experience shame and were more likely to take their case further. In southern Shan State a woman who had a land dispute with a neighbour initially informed the 10 household and 100 household leaders then, when they couldn't resolve it and after asking her husband to return home, they took the case to the village land committee. In Mon State a woman disputant described how, on the advice of the VTA, she took her case to the township land department who helped her resolve the dispute. While social norms and shame have less impact on land and other disputes, inequalities between women and men do impact on women's ability to have disputes resolved. The women who described land cases tended to be older, have financial resources, and have the support of family members. Women with less resources and bearing the burden of caring responsibilities were less likely to take their case forward.

Most women were only motivated to take their case to a dispute resolution process when they had reached breaking point or could no longer tolerate the situation. A CSO leader in southern Shan State said that it is "women's strong desire to get their things back when they are taken by force. For example, in a land issue, when this is the land from which she relies on for the whole family's livelihood, she will decide to go to the end even though she isn't

educated". In domestic violence cases women are more motivated when they get to the stage where they cannot tolerate the violence anymore. Support from a family member or neighbour, and the presence of women's groups or women's CSO committee members in the village, motivated women to take their case forward.


**Most women reported that they wanted their dispute resolved at local levels as they face different barriers in bringing the case from the family to township.** Most women disputants want to resolve disputes at village level as a result of transport issues, language barriers, levels of education and limited access to information, in line with findings by MyJustice (2018) for community members in general. A woman leader in Mon State said, "women face language barriers, and the higher rank people such as judges and Burmese officers shout at Mon women and blame them for not being able to understand and speak Burmese". In Kayin a woman 100 household leader said that "women just accept any decision at the community level because they don't need to bring the case to the township where they have to speak Burmese to the police, when they can't even articulate their problem in our native Kayin language". Women disputants described how they would usually try to solve the problem at the household or family level first before progressing to community level mediation. "People really want to deal with their dispute at the community level and do not want to go to court or the police at township level, even for murder cases" (woman leader, community based women's group, Kayin State). While this finding is similar to that for men, women had additional reasons for preferring CBDRM.

**Women disputants fear voicing their concerns and do not know what other options are available:** At household level, women tend to accept that the husband makes decisions about children, school, and village issues, though the husband may consult the wife on financial matters. Women believe that they do not have the capabilities to influence decisions. In Mandalay, for example, a women's focus group discussion shared that women do not decide because they do not know how to make decisions. At community level women are afraid of not being heard or not being taken seriously so they do not always voice all of their concerns. Men, however, think




*Women are taught to be tolerant, especially if they are a wife and a mother, so they cease disputes. Even if their husband has beaten them, they are afraid he will go to jail, so they keep silent*

– Male community leader, FGD participant



*Keeping a family together is the first priority for the village leaders, they usually ask women who want to divorce to reconsider their decisions and ask them to wait, sometime up to 6 months. So, women have to suffer beatings for 6 months, only then they might get a divorce*

– Woman disputant, Kayin State



*We prioritise women in solving domestic violence cases, because we understand that they are mostly beaten up by their drunk husbands, so we have empathy and consideration for their side*

– Male community leader, FGD participant, Shan State

women do have an opportunity to say what they want, for example a male community leader in Mon State said that women tend to accept the decisions made by 100 household leaders and VTAs as their voices and concerns have been considered in making the decision. Women CSO leaders in Kayin said though that, while women can express their voices and concerns during mediation, if they disagree, they dare not speak up in front of VTAs as they do not take their words seriously.

**Women disputants described power asymmetries as a barrier to accessing CBDRM, especially for young women, poor women, and women with less education or connections.** Women reported trying to resolve issues themselves but needing the support of family, neighbours or justice facilitators to resolve their disputes. In southern Shan State a woman disputant gave an example of where the man with whom she is in dispute is older and has connections to other power actors, such as NLD at the township level, so he was more influential in mediation. In Kayin, a woman described a barrier as being when

a woman is poor, and the other party is rich and well connected which makes them more powerful. A woman in Mon State described how men, especially older men, are listened to and women are not even when they have the same issue. Focus group discussions also identified the reliance on the father as head of the household to solve problems as an issue for women who felt powerless in the household. In land cases women felt that they were powerless if, for example, they had no connections to the township land department (Mon State) or support from other community members (southern Shan State). In Kayin State one woman disputant described how her friends, neighbours and Yat Mi Yat Pha did not want to get involved in helping her resolve her financial dispute as they did not want to 'lose face' with the other, more influential party.

**Social norms such as arh nah deh, and norms related to women's modesty or their ability to travel alone affected women's access to CBDRM.** Social norms affect women and men's ability to participate in CBDRM processes, and demand fair outcomes, differently. The concept of hpon, assumed to be a natural quality that gives higher authority and status to men (Gender Equality Network 2015), influences how women can make choices about justice options and how they can engage in mediation discussions. The concept of arh nah deh, which means feeling impolite to express one's true feelings as this might embarrass another person (ibid), affects how people, especially women can engage with village leaders and mediators. Yin kya hmu or 'culture' is defined as politeness or gentleness and, as bearers of culture (ibid), it can be difficult for women to be assertive and demand resolution or challenge outcomes.

Respect for elders also makes it difficult for women to challenge people, especially men, when combined with hpon and arh nah deh. Notions around karma serve to make women internalise their situation and accept outcomes as their fate. Social norms that serve to normalise violence against women are immortalised in local proverbs such as "the more you beat her up, the more she will love you" and "never have mercy on your wife or your cow". In some areas women are not supposed to travel alone, or just with other men, especially at night which limits their ability

to find a resolution outside of their community. These all affect how women are able to demand fair outcomes or provide feedback on the outcomes of mediation.

**Despite this, in many areas the majority of village leaders/VTAs think that women do not have any barriers in dispute resolution (though there were large differences in opinion).** In Mandalay for example, village leaders and VTAs think there are no barriers for women in CBDRM as they are solving women's disputes and feel that women can go and talk to them. In southern Shan State, however, community leaders and community members shared a long list of barriers facing women. In Mon State barriers were mostly framed around women's lack of capacity and knowledge. In one focus group discussion one woman respondent said that there is no discrimination in the villages and women have to be punished and fined as much as men. In some cases, men from an FDG recognised the barriers for women in CBDRM, while some women participants in an FDG in same the village said that they did not face any barriers.

**Most women disputants had to take their case to male mediators but would prefer women mediators.** VTAs are considered the most authoritative mediators in community based dispute resolution and are mostly male. Yat Mi Yat Pha are often approached to mediate as village elders, however, despite the name literally meaning village's elderly mothers and fathers, women are absent in this structure. The impact of this was felt particularly in domestic violence cases. In one case a woman described how she took her case to a female VTA who she felt listened to her and understood her dispute in a way that a male VTA would not saying "if the VTA were a man, he would make me stay in the marriage without a divorce. He would not consider my well-being. I would not be able to tell all things frankly and freely".

**Some women were able to progress their disputes at township level with the support of local CSOs when they had family support, the confidence to speak out, awareness of their options and the financial resources.** Women were perceived as generally having less access to knowledge of legal options, less support from family, and less control over financial resources to take a case to court than men. Women who had taken their cases to the township



were considered the exceptions rather than the norm. For example, in a land dispute in Southern Shan State, a woman's land had been grabbed by the military in 1993 and handed over to an ethnic armed group. In 2012, when the village land management committee was formed, she decided to try to get her land back even though the leaders from her community did not support her. She went to trainings by the Da Nu Cultural Association in Taunggyi who then facilitated a meeting with the focal person of the special region administration. After four years she was able to

cultivate her land until the military reclaimed it in 2019. She was able to do this through persistence, because she had some financial resources, and because she had the support of the Da Nu Cultural Association. With their support she felt she was able to influence the dispute resolution at each stage. Such cases appear to be exceptions and possible for the women who have the ability to travel, speak out, the connections at township level, and do not have the burden of caring responsibilities.

## Women's perceptions of fairness in Community Based Dispute Resolution and Mediation Processes and outcomes

### Understanding the concept of fairness

Recent research suggested that most women and men in Myanmar appear to share notions that justice involves treating people equally, with fairness and respect, and that vulnerable people should be taken into consideration (MyJustice, 2018). A more complex and nuanced picture emerged here from the interviews and focus group discussions, demonstrating that people's perceptions of fairness are shaped by who they are, where they are positioned within society, and how much relative power they possess in a specific situation (Berrey et al, 2012).

Different actors had different understandings of fairness, and women found it difficult to articulate what it meant for them in all four research areas. In a


women's focus group discussion, women highlighted that some decisions are not acceptable for women disputants, but they just accept them as they want the case to proceed to township level or do not want to be blamed for the outcome at community level. One woman mediator in Kayin said that "money is more important than fairness, men do not usually have empathy, sympathy and consideration towards women". In Mandalay a woman CSO leader said that as decisions are mostly made on traditional practices, women just follow the decision as they have to follow the culture and traditions. For example, if there is a divorce, both sides have to provide compensation to the village as divorce is assumed to be harmful to the village. One woman mediator said fairness meant decisions that satisfy both sides.

For women disputants, being able to voice issues and concerns during the process was perceived as related to fairness. Some women reported that in dispute resolution processes they can say what they want and that they assume the decisions of the mediator must be right as they have experience and the mandate to solve disputes. A women mediator said that to be fair, decisions need women's voices and that "when some women start demanding, women get some space". Having a voice and having space within the process was also mentioned by most women CSO leaders. For example, in Southern Shan State one respondent said "it is important to provide a space for women's participation in decision making fora, giving them equal opportunities. It is necessary to empower them so that they dare to speak".



*The decisions are mostly based on customary practices and neither the mediators/village leaders / VTA or women disputants realise these are not fair*

– CSO leader, Shan State



*There is nothing protecting women's interests. Decisions are made mostly by men and they don't understand women. Customs are not fair for women but are followed by both. For men, this is okay to follow as nothing is harmful for them.*

– Women's FGD, Kayin State



## How women perceived the fairness of community based dispute processes and outcomes

**Women and men had different views on whether disputes are resolved in a fair manner.** Men tended to think disputes are resolved in a fair manner where mediators listen carefully and consider everyone equally. Many thought that mediators should be trusted to make the right decision. There were a few however who thought that women's involvement is necessary to make things fair as they have different perspectives and an ability to solve problems. A few male community leaders also mentioned the need to follow laws, though one said, "the laws are only in the book at the township level but there is no fairness in practice".

Women disputants believed outcomes were fair based on what they believed were the range of possible outcomes. Outcomes were perceived as fair, for example in domestic violence cases, when they included what the women requested, that their abusers were held accountable for their actions and there was no bias in favour of the perpetrators. In Kayin, women disputants said they "should get what they deserve" such as financial support and child custody in divorce cases. Women disputants from Mandalay think that the outcome is fair when their husbands are fined in cash by the VTA and asked to give compensation to the women disputants. Some women said the outcome is fair if the process had been fair and they were treated equally with men. They associated fairness with concrete outcomes, a short process at community level, and not with being asked to remain in the same situation as before.

**Women appear to consider the outcomes of CBDRM fair even if they are not satisfied with the results.** A CSO leader in Kayin shared that women will accept outcomes because they do not know their rights, only local customs. Shame, a lack of confidence and not wanted to prolong the process prevent them from taking their case to the township level. Costs can be prohibitive and many women fear going to the police station. Women have caring responsibilities and income generating activities that are difficult to leave while they pursue their case. Dealing with formal justice means they need evidence and proof to support their cases, which can be hard to provide by the time they get to the stage of taking a case to township level. Often women do not have access to information or experience with the legal system and do not understand the process or the questions asked during more 'formal' processes. One woman described how she just accepted the VTA's decision in a child custody case as her karma. This reflects findings from MyJustice (2018) that over one third of less educated women, with cases where action has not been taken, identified karma or embarrassment as the main reasons, compared with only 13 percent of the rest of the population suggesting that social norms play a powerful role in some women's experiences.

**Many women felt they needed to tolerate decisions even if they continued to be in physical danger.** There were multiple stories from women disputants, focus group discussions and key information interviews about how women had to stay in violent relationships following the decision of the VTA. One woman in Kayin stated that "keeping a family together is the first priority for the village leaders, they usually ask women who want to divorce to reconsider their decisions and ask them to wait, sometime up to 6 months. So, women have to suffer beatings for 6 months, only then they might get a divorce". While men may be asked to sign a declaration saying they will not do it again, it is always women who are asked to tolerate, behave better, and make efforts to put up with the husband. Women are being asked by mediators to stay in abusive relationships as domestic violence is normalised and family and community harmony prioritised. In Kayin and Mon States women described how single girls are asked to get married to someone who raped her to preserve the girl's dignity. In Kayin State, one woman said this social norm is so strong that some girls think they are lucky if the boy marries them, even when they are forced to by the VTA/village leader. Fairness was not seen to be relevant to the resolution process.

The study team observed that domestic violence issues are minimised or normalised, with communities often starting focus group discussions saying "we don't have any disputes in our community. We only have small issues like disputes between husband and wife." The multiple examples of women experiencing violence and being asked to stay in abusive relationships are in line with findings in other studies. For example, Women's League of Burma (2017) found that male justice providers do not treat gender based violence as a serious offence, either dismissing the claims due to "lack of evidence" or settling the dispute between the parties without referring to the formal justice system. Research by the Gender Equality Network describes the impact of how male elders play mediating roles between families, such as in cases of domestic violence, where social practices "allow men to bargain and negotiate with other men over the heads of their wives" (Gender Equality Network, 2015, p56).

**For village leaders and VTAs family cohesion and village harmony, rather than women's rights, are the priorities when making decisions.** The Ward/Village Tract Administration Law (2012) outlines a long list of duties including "security, prevalence of law and order, community peace and tranquillity, and carrying out the benefit of the public;" and "safeguarding the rights of persons living in the ward or tract" (Justice Base 2016). VTAs appear to focus on the former with a community leader from Kayin State explaining that decisions are based on ensuring good relations between the parties, community harmony and peacefulness (see also Kyed, 2018; MyJustice, 2018; Norwegian Refugee Council, 2019).

For domestic abuse and divorce cases "the goal is to get a good relationship between the husband and wife" and if there is a community related dispute, for example over land or noise "then the goal is for village harmony. Mostly the decisions are intended to benefit the community" (male community leader, Hpa Ann township, Kayin). Male community leaders tended to think the approach was fair for women as "we solve the problem till the women are satisfied" (male community leader, Hlaing Bwe township). Women CSO leaders tended to think this was not fair for women and "ways of decision making need to change based on laws, accountability and rights not on customary practices" (woman CSO leader, Taunggyi, Shan State).

**Women mediators were mostly considered to support fairer outcomes.** One male community leader explaining that "we prioritise women in solving domestic violence cases, because we understand that they are mostly beaten up by their drunk husbands, so we have empathy and consideration for their side". One male village leader from Hpa An went further saying "when there is a women VTA here, then things are fairer" (Hpa An). Most CSO leaders also think that women mediators/VTA are fairer as they have empathy and sympathy for women disputants. Women disputants, mediators and CSO leaders emphasised listening to women, protecting women's rights and equality in decision-making as important for a fair process. A common response from men and women was that a fair outcome was one that satisfied both parties.

**Most CSO leaders think that CBDRM is not fair for women and that only legal justice is fair and effective.** Only a very few CSO leaders think that CBDRM is fair to women. The majority give examples of where women have to keep quiet and how women do not know whether a decision is fair or not. One woman CSO leader in Kayin said "Whether it is fair or not depends on the acceptance of the women. If they believe that women are supposed to tolerate then they will accept this. If women know that they have rights, then they can reflect whether it is fair or not. Now only very few women know rights and laws, even educated women are trapped in customs and practices". They think decisions are made based on the power and authority of the disputants and often harm women and violate their rights. In Mandalay, a CSO leader shared a story about a woman whose land was grabbed by a rich man in the village as she did not have any documentation even though she had lived in the village for 50 years. She said that "the decisions are mostly based on customary practices and neither the mediators/village leaders/VTA or women disputants realise these are not fair".

**Social norms and customary practices often do not support fairness for women, but some positive social norms could be used to support fairer processes and outcomes.** Women in a focus group discussion in Kayin said that in the mediation process, "there is nothing protecting women's interests. Decisions are made mostly by men and they don't understand women. Customs are not fair for women but are followed by both. For men, this is okay to follow as nothing is harmful for them." Women are shamed for not following social norms and this is embedded early with sayings and proverbs passed down from elders to children and youth. A woman CSO leader said decisions are made on the norms accepted in the community such as "don't make wind stronger when there is fire" (asking women to tolerate anything), "don't put the fire inside out" (don't let other people know about private matters), and "don't lose face to someone who is your neighbour or from your village" (put up with things and do not complain). One male respondent linked fairness to acts based on the Buddhist concepts of saytana (good intention) and metta (loving kindness) and talked about fairness being about treating people equally without discrimination. This link between Buddhism and non-discrimination is potentially something that could be explored further in Buddhist communities.

**Many respondents shared that a lack of knowledge prevented women from demanding fairer outcomes.** In Mon and Kayin States in particular, respondents suggested that women are not aware of what fair practices and decisions are, which is likely because women have had less access to education and/or information. Many respondents suggested the need for improved knowledge and education though the emphasis varied from peace, justice and human rights to knowing what is right and what is wrong, to following Buddha's way to fairness. Women CSO leaders suggested that VTAs also need skills such as empathy and respect, as well as more legal knowledge as they saw the law as fairer than customary practices. This is a slightly different view from MyJustice (2018) findings that the law is seen as a tool to maintain order, rather than promote a fair and just society.

# Gendered roles, decision making and influence in community based dispute resolution and mediation processes

## Family Members

At family level, the Ein Htaung Oo Si, or head of the household, who is usually male, acts as a gatekeeper for how disputes are mediated. Married women tend to be considered as household heads only when they become widows, are divorced or separated, or in circumstances where their husbands are no longer present. Given women are rarely heads of household, this practice of valuing the head of household, in both private and public spheres, prevents women's participation in decision-making, their ownership of assets and property, and their roles in community affairs. Social norms are described in sayings and proverbs such as "the son is the master, the husband is the god". These support the perceived moral authority and the legitimacy men's decisions of men at the household level. As a result, men act as the gatekeepers in deciding whether to take a case further or not. For domestic violence and other "domestic" issues these are considered as private matters and given perpetrators may be family members, men would usually decide not to take the case outside of the family.

Women who are senior in the household or female breadwinners can have a role in mediating disputes within the family and between families and can also act as gatekeepers to women's access to CBDRM. Sometimes, the elderly person of the house has a say, which includes women if they are the elder person in the house when there is no male senior at the house. This includes the grandmother, the mother, or

the eldest daughter of the family. If the eldest daughter or the mother is also earning income for the family, then her decision making power is significant and she can play a big part in making decisions about the disputes. Education has been also identified as one of the attributes of women who have a role in decision making at the family level in general. Senior women member in the family can have a critical role in mediating within and between families when it comes to domestic violence. Like male heads of the house, they also perform gatekeeper roles in making decisions on whether to proceed the case further or not. Given the influence of social norms they may also prevent a domestic violence case from being taken further.

Women often ask their parents or other women, such as mothers, aunts, and sisters for advice and support particularly for domestic violence and divorce cases. These cases are most commonly considered 'private' and should be resolved within the household wherever possible. A woman leader in an FGD in Shan State said that "for a woman and a young girl, it is shameful and harmful to her dignity to have disputes, so they are prohibited from making a case". Case study 1 describes a case of domestic violence where a young woman requested support from her parents to help her escape a violent relationship. When the VTA recommended they stay together the parents intervened to encourage the VTA to grant a divorce.

## Community Level Actors

Women play different roles in mediation such as accompanying women disputants, as facilitators, decision makers, connectors and communicators to other justice actors at the community and township level. Apart from women VTA and 100 household leaders, who have a role in decision making in dispute resolution, other women who have roles include: the head of women's groups for village welfare, single women's groups and community based women groups, and active women who have connections or education such as husband who were ex-village leaders, relatives of the current VTAs and 100 HH, school teachers, nursery teachers, or members of Myanmar Women Affairs Federation (MWAFF) in the village. Unless they are VTAs or 100 household leaders, women's involvement in dispute resolution is not mandatory and upon request by women disputants, their family or the VTAs and the Yat Mi Yat Pha (see below on their roles).

These women's roles are mostly as justice facilitators, rather than mediators. They were described as having provided support for women to tell their story, they reframed women's understanding of the situation, they translated the women's perception of seeking justice by sharing information and contacts, they guided and coordinated private conflicts to be made public by accompanying them mostly to VTAs, linking the women disputants to justice actors at the township level, and they participated at the hearings at VTA's office upon request from the VTA. In some cases, when the cases are put forward to the township level either by the disputants themselves and/or by the VTA, they also accompanied the women disputants and their family to the police, government offices, or CSO at the township level. The study found out that women VTAs tend to work with women by accompanying them and providing advice, and being witnesses in the discussion compared with men VTAs. Case study 5 describes how one woman who became influential in solving disputes started out when she was selected as a leader of the young women's group, which was primarily formed to support the village's religious activities and cooking for the village's events. This inspired her to get involved in more community issues and she ended up successfully resolving a dispute between her village and a mining company.

The specific context of a village or community affects the roles women can have in CBDRM, and in non-government controlled and mixed control areas women's roles and influence are more complex. While Government of Myanmar law does not define VTA's specific mandates for dispute resolution, NMSP and KNU laws, for example, stipulate what types of crimes and degrees of penalties the village level can deal with as well as roles for women's representatives in the dispute resolution process. In recent research by Saferworld (2019), the involvement members of the Karen Women's Organisation (KWO), in justice committees at the village, village tract, township, and district levels was shown to improve gender equality and women's access to justice (Saferworld 2019). The authority of the KWO and the empowerment of women means that a woman is always present during the village committee's dispute resolutions and actively participates in the hearings, even when a dispute or crime does not have a female complainant. The village KWO leader also collaborates with KWO representatives from other villages in the village tract to resolve matters involving women (ibid).


This study found that seven out of thirteen women mediators interviewed were from Kayin State. Two VTAs were from Mon and Kayin State, the 100 household leaders included one woman from Mandalay, one woman from Mon and two women from Kayin State. Karen matriarchal culture, in which the head of a spirit clan is always a woman and the husband becomes part of the wife's clan at marriage, may have a contributing factor for more women in the leadership positions coming from Kayin State.

Other research has reported that women village heads are more common in non-government controlled areas, for example potentially between 30-40 percent of village heads are women in the largely non-government controlled Hpapun Township (Minoletti, 2014). UN Women also found that in Mon State the NMSP were required to notify the Mon Women's Organisation in cases related to 'women's issues' such as sexual violence (UN Women, 2015).

While some women are taking on dispute resolution roles, particularly in conflict affected areas, UN Women (2015) caution that, even as women assume non-traditional roles, “these roles are underscored by traditional gender stereotypes [where] [w]omen continued to bear the responsibility for care work in difficult circumstances and gender relations remain largely untransformed”. While traditional separations of roles - with the women’s role as ‘private’ and men’s role as ‘public’ - can be challenged at times of transition or conflict, there is still a need to transform discriminatory stereotypes and challenge conventional gender relations (UN Women 2015).

**In some cases, schoolteachers were described as supporting women to resolve disputes by accompanying them to mediation meetings or referring their case to CSOs.** In Kayin State, CSO leaders shared that schoolteachers, who are mostly women, sometimes accompany women to mediation as they are more likely to be heard as a result of being educated. In Mon State, CSO leaders reported that female schoolteachers are identified as someone women trust, and women bring them to discussions on their disputes with the VTAs. School teachers are usually knowledgeable, dare to speak up, are able to question the VTA, are respected in the community and have access to information and connections. When CSOs get cases from the village, CSO leaders report that these are often referred by teachers.

**Social norms and traditional practices affect women’s roles and influence at all levels.** In Kayin State a woman who had asked for a divorce said that there were double standards for women and different sets of values for men and women in following customary practices. In southern Shan State focus group discussion participants identified the division between private and public affairs as a barrier, especially as women are considered irrelevant to a village’s affairs after getting married and are busy with household matters and livelihoods. One male village leader there said that women who speak up are “someone who doesn’t know anything but telling things for the sake of telling”. Social norms are not just harmful for women in domestic violence cases but also just in speaking their mind about a range of injustices. In other research, the Norwegian Refugee Council



*I have to raise my voices many times with the hope that one time I will be considered*

– Women leader from community women group, Kayin

(2019) found, for example, that “access to land and property is shaped by the persistence of social norms and values, marital and inheritance patterns” all of which are gendered.

Women CSO leaders said there was a need to reduce such patriarchal practices, and to promote gender equality and human rights awareness, particularly awareness of harmful traditional practices. One CSO leader explained that women are not aware of gender stereotypes and the harm they can cause, and they are used to and accept them. Having awareness of a right does not mean that social norms or traditional practices will allow it in practice though, for example reporting a case to a third party can be perceived as conflict escalation, which is associated with feelings of shame and the loss of dignity (Kyed 2018) or seen as a “radical, potentially subversive, act that disrupts social order” (MyJustice 2016, p29).

**Women’s influence is affected by their age, ethnicity, religion, lower social status, their lack of economic power, and their lack of representation in public life.** The inequalities that exist between men and women can make it difficult for women to challenge social norms that make gender based violence acceptable, and limit women’s roles and influence in CBDRM. In Kayin State a woman mediator said that “there are women who can be mediators, but they aren’t invited or welcomed and people don’t let them play a role in the front. If they come to the front by themselves, then they are not liked for this”. In Mon State, community leader interviews included comments like “while women have a say, they cannot make decisions as it is the men who earn the money”. Exceptional cases are women who are the main earner, women headed households and older women in family households. A CSO leader in Mon State also said that for Muslim women, their religious leaders make decisions on any disputes and Muslim women usually do not inform or solve the dispute with VTAs and are asked not to tell their disputes to others.




## Village Leaders

Yat Mi Yat Pha, or the village elders, are influential and act as gatekeepers to women's participation and access to CBDRM, but women are mostly excluded from Yat Mi Yat Pha. While the name Yat Mi Yat Pha literally means village's elderly mothers and fathers, women are generally absent in this structure. Yat Mi Yat Pha are formed with the older, respected men such as ex-village leaders, rich men, religious men and active men in the community. It is an informal village governance institution that plays an important role in steering and providing guidance and advice to VTAs and is involved in making decisions on community affairs through the consultation with the VTAs. Sometimes, the Yat Mi Yat Pha are very influential with VTAs and act as gatekeepers to women's involvement in CBDRM, though they are not always involved in decisions to resolve disputes.

Religious leaders are also influential in CBDRM and again they are mostly male. Most of the references to religious leaders were related to Buddhist monks, Hindu and Muslim religious leaders, and nuns were not mentioned at all. Christian religious leaders' involvement in dispute resolutions was not mentioned by the interviewees in this study. Other research has shown that religious leaders often mediate inter-communal disputes (Mercy Corps, 2017), and that women are negatively impacted when religious institutions displace legal justice with religious norms, influencing whether women report disputes or claim their legal rights (Justice Base, 2016).

100 household heads and VTAs most often mediate disputes as they are perceived to have been given the mandate by GAD and the Ward/Village Tract Administration Law (2012). A woman mediator from Hlain Bwe Township, Kayin State shared that the role of the VTA is very important because he has administrative power and that "women cannot make any decision even at the family level, forget about the community level". A male community leader said that VTAs are the most powerful and everyone has to follow his decision because he is elected and has capacity, and because they negotiate with both parties to get agreement. There are few women 100 household leaders and VTAs, though those that exist are considered to have the same role as male 100



*Initially, the Yat mi Yat Pha thinks that "what can she do as a woman" and they did not collaborate with my activities even though I'm a VTA*

– Woman VTA, Mon State

household leaders and VTAs. A woman 100 household leader in Mon State said that "we are appointed legally by GAD, so we have power".

The few women who are mediators are VTAs, 100 HH leaders, educated, have exposure to township administration, are well-connected and many had male relatives in power (e.g. ex-EAO leaders, ex-village heads and ex-VTAs) (see also UNDP, 2015). In this study thirteen women were identified as women mediators. These includes two VTAs, four 100 household leaders, one nursery teacher, three members of MWAF, two leaders of CBOs, and one active woman whose husband is an ex-100 household leader. They are highly motivated and described a desire to work for their village's needs and wanting their village to be a good example to be followed by others. They spoke of not being afraid and of proving that they could do what men can do. In Mandalay a mediator was also motivated by getting merits for solving other people's disputes. For some women leaders, participating in a programme like NCDDP or having had training from NLD helped motivate them to become mediators. In Kayin, a male respondent identified the Karen matriarchal culture as a motivating factor for women mediators there.

Men are more influential unless women are "brave, confident and educated" and, even then, their decisions are continuously challenged by men. A female FGD respondent said that women cannot influence the decision making although there are exceptional cases for women who are more educated and confident. A male community leader in southern Shan State said that "women usually stay at home, not going out, so they have less exposure. They don't dare to speak up. So, women cannot make any decisions". According to a male community leader in Hpa An Township, "women cannot make decisions in dispute resolution because they are not capable enough to do



so". A male 100 household leader from Kalaw Township said that "I try myself to make decisions that include women's desires and reflect what they want. But women do not usually speak up what they want". One woman VTA in Kayin said that "when the woman is the final decision maker in the village, there are so many men who want and try to influence her decision making". Mercy Corps' evaluation of the Sone Hmat programme showed that women mediators felt they lack power to influence the disputants and that this increased during the life of the programme (Mercy Corps draft evaluation report).

**Women leaders are not always supportive of women disputants, and women do not always support other women becoming mediators.** A female 100 household leader in Mawlamyine said "I usually tell the disputant women to be tolerant as the head of the house earns money and looks after her". At the same time, some male leaders show understanding and support, for example a male VTA in Mawlamyine said that "in solving issues for women disputants, I need to be very careful. I can't just tell them like simply talking to men. I always pay serious attention for women as I know that they only come to me when things are serious. So, I prioritise them in my decision making". Women reported that women mediators faced strong disapproval from the community, including from other women, and this makes women afraid to be mediators. One woman disputant from Mon State said that women should only be involved in cases related to women's dignity, not in all kinds of disputes. Another from Kayin State thought women should not get involved in other people's private matters/disputes and that women do not know how to solve disputes.

**Many, including women themselves, identified the individual capacities of women as a barrier to participating as a mediator in CBDRM.** Challenges for women include language barriers such as not speaking Burmese, low confidence and being afraid to talk to strangers, lack of education and knowledge, and perceptions that women will make things more complicated. Men in focus group discussions had the perception that "they can't solve disputes", that they don't have the negotiation and

communications skills required. Not having these individual capabilities makes it difficult for women to voice their concerns in a dispute or mediate a dispute. A women leader said that "we think about giving up, but we've realised that our voices can be heard, so we continued and they started slowly recognising our voices now".

**Women disputants think there should be more women mediators as they could talk more openly to them and they would have more empathy.** They also thought that the outcomes of mediation would be the same whether there was a man or a woman mediating except for in cases of domestic violence where they thought women would provide more support, that they wouldn't be asked to stay in violent relationships and that men would not just be asked to sign a declaration. Conversely, UNDP (2015) found that women local leaders criticize the lack of aspiration of other women rather than the underlying social norms or women's lack of education, skills and experience, or lack of support from the family or husband.

**Respondents see that legitimacy to make decisions comes from having power, and women generally have less power.** Power comes from personal status such as heading a household. Administrative power is provided to VTA and village leaders by government in government-controlled areas and by EAOs in non-government and mixed controlled areas. Myanmar social and cultural norms, such as respect for the elderly and religious leaders also confer power. In the context of community based disputes, people who have administrative power seem to be considered most relevant and legitimate to solve the dispute. In each of these realms women are less likely to have power and therefore less likely to have a role or be influential in CBDRM.

**Decisions are sometimes made based on financial contributions or bribes to the mediators which have different impacts on men and women who have different access to financial resources or the ability to challenge when asked to give a bribe.** After solving disputes, in some cases, the disputant who wins provides some money to show their gratitude to the VTA or more commonly disputants give pocket money ('tea money') to the VTA and his clerk. A male villager

in Taunggyi said that “while some leaders do not take sides and make fair decisions, some make decisions based on money. So, making fair decisions depends on how much money you have” (Kyaut Ni village, Taunggyi). In Mon State, respondents discussed donating fees for the VTA’s office or community development which both husbands and wives will be asked to pay for, or the perpetrators will be fined in kind or in cash. In Kayin, women CSO leaders said that men are in positions of power and so they make the decisions, and there is a lot of corruption especially in land cases. Women have different access to and control of financial resources and, as arh nah deh affects women more, it can be difficult for women to challenge men in positions of authority who have asked for a bribe.

**Village rules and customary practices can have a negative impact on dispute resolution for women at community level.** The Myanmar legal framework is not usually used, and community mediators are not always aware of existing laws and practices. Community leaders felt that most disputes were resolved according to village customs. Some villages set up their own village rules. In Shan State, a woman FGD participant said that “we all have to follow the village’s rules here and every house has to stick them on wall”. Another shared that “people don’t have legal knowledge, so they only use the village’s rules or practice”. In Mon State, a male CSO member said the “decision-making is on basis of customary practices and/or existing laws. There is no such a thing as women-centred...we need to listen to both sides of the story”.

**These rules are informed by traditional beliefs and practices, for example that it is acceptable for a man to beat his wife even though this is against the law.** Punishments meted out under village rules and customary traditions often keep a woman in dangerous situation or, in the case of fines, have the effect of punishing her too. For example, in one village, the VTA has started a road building project, and as a fine makes the perpetrator of domestic violence cases pay for cement. This discourages women from bringing domestic violence cases as the money for the ‘fine’ will come from the household, which is also a punishment for her. The existence of rules and procedures can also positively affect the quality of justice. For example, using committees rather than individuals, written case



*Women just follow the decision without making any complaints or asking any questions, we don’t know the reason why they keep quiet with the outcome. Probably, they keep quiet because they are satisfied with the outcome or they keep quiet because they do not know what the alternatives are*

– Woman mediator, Kayin

records and signed agreements, and codified rules can support decision-making (Saferworld, 2019). In KNU communities, ‘village rules’ contain the inclusion of two women representatives on justice committees which supports women to access dispute resolution (ibid).

## Civil Society Organizations

**CSOs at township level refer women to services and legal justice if their case reaches township level.** CSOs provide counselling, legal advice, information on referral pathways to justice and services. If women need support with transport costs or accompanying them to the police station or court, women’s organisations provide them. A woman CSO leader in Mon State said that the role of CSOs was to support women, to make links and referrals, and encourage women to take a formal, legal justice route rather than community mediation. In Kayin, however, focus group respondents described how some cases of divorce or disputes between husbands and wives go to the members of Myanmar Women’s Affair Federation (MWAF) and only cases considered to be crimes are brought to police at the township level.

**CSOs generally do not play a significant role in mediation at community level.** While there are women leaders at many women’s CSOs, they cannot play a key role in village level decision making processes, especially if there is no existing relationship, no member presence or no contacts at the community level. Usually, CSOs cannot influence 100 household leaders or VTAs unless they are well connected to GAD at the township level and use their influence. They can only share information or, through their members from the village, try to advocate to village leaders. At township level, their role is also not mediation or dispute resolution but linking women to services and making referrals.

In some cases, there are women members of township level CSOs who are involved in mediation at the village level while the township CSO did not have a direct role. For example, the Mon Women Organisation (MWO) formed Mon Women Committee in Mon Villages where there are MWO projects. The members of Mon Women Committee at the village seek the advice from the MWO at the township level by sharing and communicating cases with the MWO's leaders and try to play a role in sharing information on legal knowledge to the VTAs, advocating to the VTAs on making a legal case, providing legal advice and counselling to women disputants in GBV cases in general and rape cases in particular. This is also the case with the Pa-O Women's Union in Shan State. However, they both mentioned that their involvement at the village level has been limited. They cannot resolve the disputes at the community level and their involvement in hearings and advice depends on their project location, the presence and capacity of their members, and the permission and approval from the VTA for their involvement. In a few cases, if the women disputant showed interest in resolving their dispute

through the legal justice route for GBV cases, the member from the community will inform the township CSOs who take complaints directly and help women disputants report to the formal courts and police.

Unlike VTAs, CSOs have no legal or customary power to bring disputants together or legitimacy in making decisions in a village. While the VTA is in the position in which he can hear the disputes from both sides, the township level organisations have to rely on the side that contacts them. Usually they are contacted by women who think the decision making at the village is unfair, often survivors of rape, not the perpetrators, so their role is to support these women rather than mediate between the two parties. Township level CSOs tend to get involved in cases that need to be solved through legal justice and encourage women to pursue legal justice. According to the interviews with CSO members, they receive very few cases from VTAs. Mostly they receive cases from the community through their members in the community in the areas where they exist, and from community paralegals, monks, and schoolteachers.

# CASE STUDIES



## Case study 1: Domestic Violence in Shan State

A 25-year-old woman got married to a man. Since the early days of marriage to her husband, he abused her psychologically. He was drinking most of time and tortured her whenever he drank. She thought he would change when she got pregnant, however he kept drinking, wandering around and was unemployed. This had a severe impact on their relationship which was getting worse and worse. However, she stayed in the relationship and she had her baby.

One night, the woman and her baby waited for him till very late and she had an argument with him when he got back home. The husband got furious and hit her face with his fist and kicked her. While she was running to her neighbour's house asking for help, the husband followed her holding the knife in his hand. He threatened her that he would kill her. Soon, the woman's parents arrived at their home, and argued with the man. She left for her parents' house leaving him alone. This incident was known by the man's parents who urged him to bring the woman and his baby back home, but he kept on drinking with his friends without paying attention to his parents' suggestion. Later, the man came to the woman's house due to the pressure of his parents and relatives and tried to bring his wife back home. But she said that she did not want to stay in the relationship with him as she was scared of his torture. The longer it went on, the worse relationship became.

With the approval and encouragement of her parents, particularly of her father, the woman decided she wanted a divorce and informed the 10 HH and 100 HHH. However, they did not let her divorce him, saying that "this is only the immature nature of young couples, and this won't last long". The leaders said that they did not want them to separate and decided that they had to wait a certain amount of time to have a final decision. When the situation and tension between the couple were getting worse and worse, the woman and her parents again went to the 10 HH and 100 HHH and asked for their decision again. The two leaders told them that they did not know what decision they should make so they put the case forward to the VTA.

After that, the couples and both of their parents were asked to give a detailed explanation at the VTA's office. Although the VTA tried to mediate between the couple to keep them together, both the woman and her husband told him that they did not want to stay in the relationship together any longer. The VTA tried to mediate with both sides twice, but then the parents also pleaded for their divorce to the VTA. Finally, the VTA arranged for their divorce. The woman got custody of the child, so the woman and her parents asked for financial support for the child from the husband's side. The husband agreed to this and gave six acres of land to the woman.



## Case study 2: Land Dispute with a neighbour in Mon State

A 65-year-old woman was living in a big plot of land with her old husband in Mon State. She looked after two young grandsons as her two daughters lived in Shan State doing carpentry work. The land was given by her parent-in-laws. On their land, they grew some fruit trees such as pomelo. She had her land ownership document which mentioned the exact area of her land. Her neighbour is rich and also living in a house with a big plot of land.

One day, when she fenced her land, the neighbour destroyed the fence saying that she took over some of his land area. Despite showing her land document, the neighbour still claimed that part of land was owned by them. She tried two times fencing her own land but her actions were stopped by the neighbour who destroyed the fence each time. Despite her land ownership, the neighbour claimed the land was owned by him so he would not let her do any fencing. Moreover, she got threats from the neighbour. She thought the neighbour wanted to grab her land as he knew that she was not in the position to protect herself or take actions as she was an old, poor woman. The neighbour was rich and connected with government officials at the township and state level.

In the initial days of the dispute, she tried to solve it with the VTA as the neighbour did not listen to her. The VTA asked her to cut twenty big trees which were in the disputed area of land. He tried to bring both

parties to sit down and try to reach a negotiated result, but the neighbour did not show up. The VTA could not do anything about this and the dispute continued. After her failed attempt to solve the dispute with the VTA, she tried to fence her land again and again she faced the same problem and the VTA could not stop her neighbour's actions. She thought the VTA was corrupted by her neighbour which is why he did not take any action against the neighbour. She was right and they destroyed her property. When the case was not resolved at the village level, she could not put the case forward to township level as she had to take care of her old husband and two young children and did not have any information about the procedure and anyone who could accompany her to the township. The fear of her neighbour's threats and the sense of helplessness stopped her proceeding with her case. So, the dispute lasted almost 10 years without being resolved.

When the new VTA was elected in 2015, she became hopeful as the new VTA was popular and helpful to needy people. So, she decided to try again. First, she tried to discuss with her neighbour, but he did not take her seriously and listen to her. So, she went to VTA's office and explained him about her dispute and told him the whole story. She showed her land ownership document to VTA. Then the VTA called for the other party of the dispute to solve the dispute at his office. The neighbour did not come. But the VTA did not give up and he tried again to bring the neighbour for their hearings of the dispute. The neighbour responded to the VTA and let him know that they had connections with the township and district level government staff and they could solve the dispute there. The neighbour also offered the VTA a bribe but the VTA refused to take the money.

Later on, the neighbour came to the VTA's office bringing four witnesses with him. During their hearing session at the VTA's office, the neighbour denied her ownership and still claimed ownership of the disputed land. So, the VTA suggested she send a complaint letter to township land department. She did not know anything about the process, so she requested his help. The VTA wrote and sent letters to the township land department. As the old woman could not travel to the township level, the VTA and his clerk went to the township offices many times and sent several communications on behalf of the old woman. Then the government staff from the department of land documentation came to her village and did the land measurement again. She had to pay MMK 50,000 to the land department officer to measure her land and provide the document.

After that, the VTA brought the neighbour to his office and asked him to bring his original document of his land ownership. After crossing checking the land ownership documents, he identified the area where she could do fencing. She happily made a fence for her land. She was very happy with the outcome although she got 24.5 acres of fenced area of land out of her total ownership of 26 acres of land.

The whole process took two years with the help of the new VTA. But she is happy with the process and outcome of the dispute as the new VTA gave her space to express her concerns and voices. She could tell the VTA all her worries and needs, and these were considered in the VTA's decision. She said that "if I took the legal case through the court at the township level, I would not have the same experience as I'm not confident, can't understand the laws and procedure, and I don't know how to go to the township and deal with the officers". She thought that she could not afford to get a lawyer to defend her at the court or travel many times to the township as she had to look after her husband and young kids. As she felt gratitude to the VTA, she offered some money but the VTA refused to take this. So she paid MMK 30,000 to the clerks to cover their expenses for traveling and dealing with the officers from the land department at the township.



### **Case study 3 : Trafficking and forced labouring in illegal drugs selling in Kayah State**

A young woman got married to a boy whose mother did not agree to their marriage. Luckily, the husband's father approved. The couple built a house and lived on their own. When she had two sons, her father-in-law died, and her mother-in-law remarried. Her husband kept a good relationship with his mother.

Later on, her husband started using drugs and tortured her at home. She also had to take him to the hospital for a drug overdose. One day, he left home to go to his mother's house after having a serious argument with her. Then his mother sent him to Bangkok and prohibited the woman and her two sons to contact him. So, they did not have any contact for a long time. Later, she was informed by the mother-in-law to come to Myawaddy town (a border area close to Thailand) to meet her son, the woman's husband. Surprised, she went to Myawdday leaving her two sons with her mother. She was afraid of social stigma as a separated woman and wanted to stay in a relationship with her husband no matter what it cost. But she did not meet her husband there and she was very sad. Instead, she was forced to sell drugs there by her mother-in-law. Her mother-in-law knew that she needed money for her sons' education. The mother-in-law told her that she could earn a lot of money from selling drugs and send her money back to her two young sons in the village. She agreed to this as she believed in her mother-in-law and she also wanted to earn some money for her sons.

However, the mother-in-law did not keep her word and said that all the money from selling drugs was already spent on her food and expenses and there nothing was left to give her. For three years, she could not either meet her husband or send the money back to her two sons. But she tried to save money secretly. After three years she ran away from the mother-in-law when she had enough money for her transportation. But she continued living in Myawaddy town where she met another drug dealer, for whom she sold drugs to be able save money to return back home. During this time, her friend who sold drugs with her died delivering her baby and left the baby girl with her. After a few month selling drugs, she went back to her village with her adopted daughter. She lived in her house together with her two sons, her adopted daughter and her mother.

When the mother-in-law found out about this, she forced her to leave the house as it was built and owned by her son. The mother-in-law threatened her that she would be sued at the court for staying at her son's house without permission. At first, she was in dilemma to tell the whole story and seek help from the VTA and township actors as she had been involved in illegal drugs selling. She felt intimidated as her mother-in-law said that she would reveal her activities to the police if she told the whole story. So, she just informed the VTA about the threats and kept staying at the house as she Had nowhere else to go.

A few months later, her husband contacted her and provided some financial support to her two sons, declaring his intention to stay in a relationship with her again. She was again in a dilemma. She thought she faced all these issues as a result of her fear of social stigma, reliance on her husband and could not run away from illegal drugs without contacts. She told him that she needed time to think about staying in the relationship, as she now also had an adopted daughter, but she would let him stay in the house as this belonged to him.



#### **Case study 4 : Micro credit loan disputes with domestic violence in Mandalay Region**

A woman got married to a carpenter. She was a vendor selling food. Their lives were full of hardship and they were in debt. To settle the debt, she took four loans from four different sources/micro finance companies. The husband signed as a guarantee for the woman to get the loans and she would be responsible for making the payments. When the time came for repayment to the company (four times a month on different schedules to different sources), she was the one who went and paid the money to the staff from the micro-finance company.

Due to the hardship, the husband started drinking alcohol a lot and abusing her verbally. She said, "I don't dare tell him to stop drinking and make him annoyed as I need his contribution to pay the weekly loan's interest as my income was not enough". While they were struggling with four different loans and their accumulated interest, the husband thought that she did not give the money to settle the loans despite his contribution for repayment. So, he had an argument with her saying that she had to pay the debt alone as she took the loans in her name and he would not take any responsibility for this. She thought this was not fair for her as they took the



loans together although there were not under his name and they should both take responsibility for paying back the loans and the interest.

Initially, her uncle came and tried to settle the argument between the couple. But the husband was drunk and did not listen to her uncle. So, they all went to the VTA's office. From her husband's side, his sister accompanied him. At the VTA's office, the VTA asked both sides for their stories. The wife told the VTA that she wanted to get a divorce if she had to resettle all the loans by herself and she thought her husband's decision was unfair to her as they took the loans together.

The VTA decided that no divorce was necessary, but the loans had to be settled by her husband and her jointly. He said he would also negotiate with the company to give them more time. He paid some money from then so that she was able to make a payment due that week. The husband agreed with the VTA's decision and contributed his income and they both are still in the process of paying back the loans.



### **Case study 5 : Influencing disputes in Shan State**

A woman grew up in a village in southern Shan State where disputes are seen as shameful and harmful for the village. 'No disputes' is one of the village rules which hang on the wall of every house. If a dispute does come up, then the village leaders try to resolve them using customary practices and the village rules.

The main actors who resolve disputes are the 10 and 100 household leaders though the monk in the village is very influential and often the village leaders follow the monk's decisions. The woman said that "the custom we follow here is that both men and women in the village have to listen to the village leaders, not speak up or against them when we have dispute. We're afraid of the village leaders". Despite this, the people in the village prefer to solve disputes in the village. The township is far away, and people think legal justice is expensive, takes a long time and they do not trust it. People try to avoid disputes or just give up in some cases. They do not want to exaggerate their cases and "make them big".

For women, these customary practises are more harmful to women as there is shame and a loss of dignity for women in having a dispute. Women are discouraged from taking their case to the village leader and if they do, their opinions are often considered rude or irrelevant. There is a belief in the village that women should not have opinions and that decision-making is the responsibility of men only. Thus, women do not want to speak up and do not want their problems to be known by other people in the village. They are afraid to attend trainings in case people think badly of them and, in any case, women are not supposed to travel alone so getting to them can be difficult.

It was in these circumstances, that she became involved in village activities when she was selected as a leader of the young women's group, which was primarily formed to support the village's religious activities and cooking for the village's events. She was also interested in environmental issues and attended trainings and workshops run by NGOs but no one else, including the village leaders was interested.

Then she formed a group named Pwint Lin Myin Thar Mu, which means "towards transparency" with the youth from the village with the aim to help village development and youth empowerment. She worked together with the young people as a coach and ran youth empowerment activities such as workshops and training. Her father, who was an ex-village leader of the village, and her mother, supported her work. In the beginning, the villagers did not like her as she took the youth to different areas to attend workshops and training run by NGOs and CSOs.

One day, people from the village had an argument with a company that built mines and a factory nearby. Initially, the company provided support to the village. Soon, animals such as hens and pigs started to die and three to four years later, people in the village started having bad health. Their water was contaminated and dried up. The company grabbed more and more land nearby and people began to object.

She led the villagers including the youth in collecting information/survey on health and environmental damage caused by the mining factory. Then they approached the village leaders to see if they would commu-

nicate their findings to the mining company. Initially the leaders felt arh nah deh, not wanting to embarrass the mining company as they had donated to the village, but she told them that the whole village would suffer if they kept silent on this matter. She persuaded the leaders to go with her to meet with the responsible person from the company.

Following discussions with the village leaders and the company, the company agreed not to run the factory nearby the village. However, they continued to run the factory during the night. As soon as she found this out, she went to meet them this time without the leaders but only some villagers. She recorded the discussion with the company to be able to use as evidence if necessary. They said they continued to run the factory because the village leader allowed them to do so. She listened without interrupting then asked them whether they had a permit from the village leaders to run the factory and they handed one document to her. When she reached the village, she reported everything to the village leaders showing the document she received from the company. The village leaders were furious as the permit was a fake. So people from the whole village initially took action against the factory by standing around the factory to stop their operation. Later, they submitted their complaint letter to township and state respectively. There were serious discussions among the key three actors; the government officials, the factory owner and the villagers. She led the protest to the factory and their strategies also involved damaging the factory. In 2014, the factory stopped all their activities.

She started the mining case with her strong will. Together with the youth, there were six women who joined and helped her when she started her actions. She found herself having more confidence and could express her concerns clearly throughout the mining dispute. As the mining case was successfully organized and brought a big success for the village, this made the villagers, particularly the village leaders, trust in her leadership and capacities. After that, she was provided space and a role in decision making for village affairs. The villagers and the village leaders consulted with her and her advice has been well taken by them. She then was able to play a role in disputes between couples and, if women wanted to bring the case to the village leader, she helped them with this.

After her success on the mining case, she has become a role model for other women despite not being liked by men in general. She had seen that some women had started speaking up a bit, in some cases they even challenged the men by saying that "If you think you can do all by yourself, just go ahead. We won't support you anything. Let's see whether you, men alone, can do it or not". A few women are now getting roles in the village's committee when they prove themselves with their performance. On the other hand, the six women who help her in mining dispute, got married and stopped their participation in village's affairs as it is very difficult for married women to allocate time as they are busy with livelihood activities and have to accept the village norms that married women are nothing to do with village's affairs.

Now she is influential in decision making to some extent by giving her advice to the village leaders. She claimed the fact that her father is an ex-village leader, is not related to her getting more important roles in decision making. She is trusted and her leadership is only recognized through her capacity and devoted work for the village development, especially her outstanding performance on mining case. She thinks women should be given same opportunities as men and that it is necessary to provide space for women and support their participation in decision making. She believes that it is important to let women speak and encourage them to express their voices and concerns. She is now trying to work on youth including young women empowerment as she would like to see more young women getting roles like she does.

# LEARNING AND RECOMMENDATIONS

Community based dispute resolution, that is fair effective for everyone, involves understanding the gendered differences in how mechanisms and processes are experienced and who has roles in mediating disputes. Despite emerging evidence on access to justice and CBDRM, there was limited evidence and few existing interventions that address the gendered aspects of CBDRM. Much of the existing data is not disaggregated nor does it always reflect the different interests, needs and priorities of women and men.

This study aimed to contribute to the evidence base on gender and CBDRM in Myanmar, ensuring women's experiences and perceptions of fairness, and a better understanding of women's roles and influence, inform programme design and implementation. Women's narratives, as well as the views of gatekeepers, formed the basis of analysis and recommendations, which may also have a broader application in community-based peace-building, and national peace efforts. Learning and recommendations are structured in three main areas: how to improve women's experiences of CBDRM, how to create CBDRM processes that are fair for women, and how to increase women's roles and influence in CBDRM.

## To improve women's experiences of Community Based Dispute Resolution and Mediation Processes

Women reported being involved in a range of types of disputes, not just those that are considered in the private or domestic sphere. They described disputes related to land, inheritance, the impact of mining on their community, moneylending, trafficking, alcohol abuse and drugs, as well as domestic violence and marital disputes. Their experiences varied depending on the type of dispute with sexual and gender based violence and how it is dealt with through CBDRM, generating the most detailed responses from women disputants.

Most women were only motivated to take their case to a dispute resolution process when they had reached breaking point or could no longer tolerate the situation, reporting that they feared voicing their concerns, are more constrained by social norms, and do not know what other options are available. Women disputants described power asymmetries, especially women's lack of power, as a barrier to accessing CBDRM, especially for young women, poor women, and women with less education or connections. Despite this, in many areas the majority of village leaders and VTAs think that women do not have any barriers in dispute resolution.

While women disputants had to take their case to male mediators, most reported that they would prefer women mediators. Few women are able to progress their disputes at township level, and those that did so had family support, the confidence to speak out, awareness of their options and the financial resources to use more formal justice mechanisms.

### Recommendations:

- › Ensure programs are designed based on local context analysis that demonstrates how gender intersects with other factors and explores how power dynamics impact on CBDRM. This should include, for example, a nuanced understanding of who has access to the CBDRM process at what stage of the process and who has power to make decisions.
- › Adapt CBDRM processes interventions to ensure they are responsive and relevant to gender dynamics per type of dispute. For example, interventions aimed at ensuring women's meaningful participation and fair outcomes for gender-based violence disputes will significantly differ from CBDRM interventions aimed at meaningfully engaging with women to resolve land issues.
- › More specifically, review and assess whether Interest-based Mediation content and methodology are appropriate for dealing with sexual and gender-based violence cases given the tension between processes supporting a negotiated result, women's rights and survivor centered justice.

## To create processes and ensure outcomes that are fair for women

Different actors had different understandings of what fairness means in terms of CBDRM processes and outcomes. For women disputants, being able to voice issues and concerns during the process was perceived as related to fairness, and their perceptions of the fairness of the outcomes were based on what they believed were the range of possible outcomes. They perceived women mediators supported fairer outcomes, especially in domestic violence cases.

Women often appear to consider the outcomes of CBDRM fair even if they were not satisfied with the results and many women felt they needed to tolerate decisions even if they continued to be in physical danger. For village leaders and VTAs, family cohesion and village harmony, rather than women's rights or fair outcomes for women, are the priorities when making decisions. Most CSO leaders, however, think that CBDRM is not fair for women and that only legal justice is fair and effective.

### Recommendations:

- › Consider establishing structures/ procedures that mandate the participation of women justice facilitators and mediators, ensure women's voices in CBDRM processes, and support outcomes that protect women from violence.
- › Provide guidelines, procedures and capacity building on gender-responsive CBDRM for male and female mediators to support fairer processes and outcomes for women.
- › Work with male gatekeepers including VTAs, 10/100 heads of household and religious leaders to challenge social norms and increase their support for gender responsive mediation of disputes.
- › Engage men and women at the household and community level to highlight positive aspects of current social norms that can positively impact on fair CBDRM outcomes for men and women. This for example can include highlighting aspects of Karen matriarchal culture or Buddhist concepts of saytana (good intentions) and metta (loving kindness) that might support fairer processes and outcomes.

## To increase women's meaningful access, participation and influence over Community Based Dispute Resolution and Mediation processes

At household level, the Ein Htaung Oo Si, or head of the household, (who is usually male) acts as a gatekeeper to how disputes are mediated. Women who are senior in the household, or female breadwinners, can also have a role in mediating disputes within the family and between families and can also act as gatekeepers to women's access to CBDRM. At community level, women play different roles in mediation such as accompanying women disputants, as facilitators, decision makers, connectors and communicators to other justice actors at the community and township level. The specific context of a village or community affects the roles women can have in CBDRM, and in non-government controlled and mixed control areas women's roles and influence are more complex.

100 household heads and VTAs most often mediate disputes as they are perceived to have been given the mandate by GAD and the Ward/Village Tract Administration Law (2012). The few women who are mediators are VTAs, 100 HH leaders, are educated, have exposure to township administration and are well-connected. Women disputants think there should be more women mediators as they could talk more openly to them and they would have more empathy.

CSOs tend not to be involved directly in mediating disputes at community level, rather they refer women to services and legal justice if their case reaches township level. In some cases, there are women members of township level CSOs who are involved in mediation at the village level though the township CSO does not have a direct role. Unlike VTAs, CSOs have no legal or customary power to bring disputants together or legitimacy in making decisions in a village.

Social norms, gendered power dynamics and traditional practices affect women's roles and influence in CBDRM. Women's influence is also affected by their age, ethnicity, religion, lower social status, their lack of economic power, and their lack of representation in public life. Respondents see that legitimacy to make decisions comes from having power, and women generally have less power. Village rules and customary practices can have a negative impact on dispute resolution for women at community level while the Myanmar legal framework is not usually used, and community mediators are not always aware of existing laws and practices. The findings reveal that it is important to explore power dynamics and the structural inequalities that cause violence, so that women can have better experiences of justice and have roles and influence in community-based peace efforts.

### **Recommendations:**

- › Consider expanding the targeting of CBDRM program participants beyond “mediators” to include other female community members or groups that play significant roles in CBDRM. These may include the head of women's groups for village welfare, single women's groups, active women who have connections or education such as husband who were ex-village leaders, relatives of the current VTAs and 100 HH, school teachers, nursery teachers, or members of Myanmar Women Affairs Federation (MWAF) in the village.
- › Increase women's capacity and confidence to take on roles in CBDRM by building their capacity around mediation and negotiations skills, leadership skills and exposure to laws and positive role models. Work with local women's groups to offer opportunities for women to take on public roles, experience community decision-making structures and processes, and develop skills and confidence in dealing with community leaders and figures of authority.
- › Create networking spaces for influential female community members and local women's groups to develop skills and confidence in dealing with key gatekeepers and figures of authority in order to support increased female influence in CBDRM and potentially more women take on roles in CBDRM in future.
- › Consider targeting the household level in CBDRM programs, including heads of households and other family members to build their awareness of gender issues related to community disputes. This could help support women have more positive experiences of dispute resolution, potentially with a specific focus on sexual and gender-based violence and positive masculinities.

# REFERENCES

- Alliance for Gender Inclusion in the Peace Process (2017) "International Standards Guiding Gender Inclusion in Myanmar's Peace Process", AGIPP Policy Brief No. 3, Yangon: AGIPP.
- Alliance for Gender Inclusion in the Peace Process (2018) The 'Localisation' of Women, Peace, and Security in Myanmar. AGIPP Policy Brief no. 5. Yangon: AGIPP
- British Council (2018) Searching for justice in the law: Understanding access to justice in Myanmar: Findings from the Myanmar Justice Survey 2017
- Denney, L., Bennett, W. and Khin Thet San (2016) Making Big Cases Small and Small Cases Disappear: Experiences of local Justice in Myanmar, London: British Council, Overseas Development Institute and Saferworld
- Douglas, S. (2007) Gender Equality and Justice Programming: Equitable Access to Justice for Women. Primers in Gender and Democratic Governance No2.
- Gang, R. (2011) Community-Based Dispute Resolution Processes in Kabul City. Afghanistan Research and Evaluation Unit
- Gender Equality Network (2015) Raising the Curtain: Cultural Norms, Social Practices and Gender Equality in Myanmar. Yangon: Gender Equality Network
- Grizelj, Irena 2017. The Youth Space of Dialogue and Mediation in Myanmar. Berlin: Berghof Foundation
- Human Rights Watch (2019) Give Us a Baby and We'll Let You Go" Trafficking of Kachin "Brides" from Myanmar to China, New York: HRW.
- Jamar, A. and Bell, C. (2018) Transitional Justice and Peace Negotiations with a Gender Lens. New York: UN Women
- Justice Base (2016) Voices from the Intersection: Women's Access to Justice in the Plural Legal System in Myanmar. Bangkok: UN Women
- Kamler, E. (2015). "Women of the Kachin Conflict: Trafficking and Militarized Femininity on the Burma-China Border." *Journal of Human Trafficking* 1:3, 209-234, DOI: 10.1080/23322705.2015.1014664
- Kyed, H.M. (2018) Community-Based Dispute Resolution: Exploring everyday justice provision in Southeast Myanmar. Danish Institute for International Studies and the International Rescue Committee
- Mercy Corps Myanmar (2017) Baseline Actor Mapping & At-Risk Area Profiling Report: Sone Hmat Program - Myanmar
- Mercy Corps Myanmar (2018) Looking Through a Gender Lens: Gender Assessment Report
- Minoletti, P. (2014) Women's Participation in the Sub-national Governance of Myanmar. Yangon: The Asia Foundation
- Norwegian Refugee Council (2019) A Housing, Land and Property (HLP) Rights Based Analysis of Customary Land Dispute Resolution in Eastern Bago Region and Kayin and Shan States
- Paung Sie Facility (2017) Youth and Everyday Peace in Myanmar: Fostering the Untapped Potential of Myanmar's Youth. Yangon: PSF.
- Paung Sie Facility (2018) Pulling the strings: Masculinities, gender and social conflict in Myanmar. Yangon: PSF
- Peace Support Fund (2015) The Women are Ready: An opportunity to transform peace in Myanmar. Yangon: The Peace Support Fund
- Saferworld (2019) Justice provision in south east Myanmar: Experiences from conflict-affected areas with multiple governing authorities. Yangon: Saferworld.
- UN Women (2015) Why Gender Matters in Conflict and Peace - Perspectives from Mon and Kayin States, Myanmar
- UNDP (2004) Access to Justice: Practice Note
- UNDP (2015) Women and Local Leadership: Leadership Journeys of Myanmar's Female Village Tract/Ward Administrators. Yangon: UNDP
- Valters, C. and Jahan, F. (2016) Women and power: Mediating community justice in rural Bangladesh. London: Overseas Development Initiative
- Warren, R., Appelbaum, A., Fuhrman, H., and Mawby, B. (2018) Women's Peacebuilding Strategies Amidst Conflict: Lessons from Myanmar and Ukraine. Georgetown Institute for Women, Peace and Security
- Women's League of Burma (2016) Briefing Paper: Access to Justice for Women Survivors of Gender-based violence committed by state actors in Burma
- Women's League of Burma (2017) Girls Bear the Shame Briefing Paper: Impediments to Justice for Girl Children who have Experienced Sexual Violence in Burma



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