

Unlocking the justice chains for children in conflict with the law in Myanmar



“The true measure of the justice of a system is the amount of protection it guarantees to the weakest.”

John Doughty – September 2018

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Abstract

This study focusses on understanding justice for children in conflict with the law in Yangon and Mandalay. The paper builds upon broader research into Myanmar's plural justice systems by focussing on the experiences of children who come into contact with community or formal justice systems. Specifically, this study explores the systemic and behavioural factors that facilitate or impede the processes and outcomes for children accused of criminal behaviour.

This research is based on the empirical evidence of a number of different actors within the juvenile justice systems. Through them it has been possible to elicit the experiences and challenges faced by children in conflict with the law.

The findings show that the community-based justice systems are much preferred and achieve better outcomes for children. The formal system is tainted by issues of violence, corruption and impunity.

Cover photo credit: Sonne International - <https://www.sonne-international.org/en/>

Cover page quote: Aung San Suu Kyi (1995)¹

¹ San Suu Kyi, A. (1995) Freedom from Fear: And Other Writings. Penguin UK; p.185

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Statement of originality and ethics declaration

This thesis is the result of my own independent work/investigation, except where otherwise stated. Other sources are acknowledged by explicit references.

Signed  (John Doughty) Date: 23rd September 2018

I hereby give consent for my thesis, if accepted, to be available for photocopying and for inter-library loan, and for the title and summary to be made available to outside organisations.

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Statement of Ethics Review Approval:

This dissertation involved human participants. A Form TDE E1 and TDE E2 was completed for each group of participants and a Form TDE E3 showing ethics review and approval, has been attached to this dissertation at Annexe 4.

Contents

Abstract	2
Acknowledgements	3
Statement of originality and ethics declaration	4
List of figures, tables and case studies	6
Acronyms	7
Structure of the Study	8
Chapter One: Introduction	
1.1 Background.....	9
1.2 Rationale, aims and objectives	10
1.3 The research context	11
Chapter 2: Literature review	
2.1 Myanmar’s legal systems	15
2.2 Children in conflict with the law in Myanmar	17
2.3 Unpacking justice chains	19
Chapter 3: Research design and methodology	
3.1 Methodology, sample and data collection.....	22
3.2 Ethical considerations	23
3.3 Scope, challenges and limitations of the research	24
Chapter 4: Research findings and discussion	
4.1 Key characteristics of interviewees	26
4.2 Justice chains for children in conflict with the law	26
4.3 Coding frequency & data analysis	29
4.4 Community versus formal system	31
4.5 Barriers	35
4.6 Enablers	42
4.7 Outcomes	45
4.8 Interviewees recommendations	46
Chapter 5: Recommendations and conclusion	
5.1 Conclusion	48
5.2 Recommendations	50
Bibliography	52
Appendices	
Annexe 1: Criminal Procedure Flowchart	56
Annexe 2: Coding Scheme	57
Annexe 3: Information Sheet	58
Annexe 4: Ethics Approval Form – TDE E3	62

List of figures, tables & case studies

Figures:

Figure 1: Map of Myanmar

Figure 2: Map of Yangon region

Figure 3: Map of Mandalay region

Figure 4: Justice chain framework – multiple systems

Figure 5: Unpacking the political economy of each stage of the justice chain

Figure 6: Justice chain for children in conflict with the law in Yangon & Mandalay

Figure 7: Word cloud representation of coding typologies

Figure 8: Word cloud representation of 'barrier' typologies

Figure 9: Word cloud representation of 'enabler' typologies

Tables:

Table 1: Codes, themes, typologies and frequency

Table 2: Frequency & rank of criminal offences

Table 3: Frequency corruption is mentioned during interviews

Case studies:

Case study 1: Theft of a mobile phone – repeat offender

Case study 2: Young lovers elope

Case study 3: Violence and forced confessions

Case study 4: Theft by a tea shop waiter

Case study 5: Appeals result in an overturned guilty conviction

Acronyms

CICL: Children in Conflict with the Law

CSO: Civil Society Organisation

CS: Community-Based System

FLS: Formal Legal System

GAD: General Administration Department

GOM: Government of the Union of Myanmar

MPF: Myanmar Police Force

NGO: Non-Governmental Organisation

PEA: Political Economy Analysis

TA: Township Administrator

UNCRC: The United Nations on the Convention on the Rights of the Child

WTA: Ward Tract Administrator

Structure of the study

This study is composed of five chapters:

Chapter One provides the background and study rationale. The aims and objectives are set out before considering the research context.

Chapter Two identifies and explores the subject literature, from Myanmar's legal systems through to an analysis of children in conflict with the law and the justice chain framework which underpins this research.

Chapter Three considers the research methodology and the approaches taken to collect data, as well as discussing the ethical implications, scope and challenges to the research.

Chapter Four presents the findings of the research and discusses those using the justice chain framework.

Chapter Five makes recommendations for future research into children in conflict with the law in Myanmar and concludes with a discussion focussing on the main findings.

Chapter One: Introduction

1.1 Background

Myanmar, formerly known as Burma, is one of the most culturally and ethnically diverse countries in the world². Between 1824 and 1948, it suffered from the devastating effects of having been a British colony³. From 1961 until 2011, it was ruled by different forms of insular, socialist, secretive authoritarian military regimes.⁴

Since independence from the British, there have been a number of different parallel internal conflicts that have centred around ethnicity with insurgent groups seeking federalisation of the country.⁵ As a result, Myanmar is considered to be one of the least developed countries in the Asia region and is ranked as low-income with an extremely high poverty rate.⁶

On 8 November 2015 there was a seismic shift when Daw Aung San Suu Kyi's National League for Democracy ('NLD') won the first (respected) democratic elections held in the country for over 50 years. The event was the end product of reforms that started in 2011 and began a purported fast-track to the democratisation of the country.⁷ The shift was considered a pivotal moment in a move towards democracy and the reform of the various institutions of oppression from the junta period.

There is however a catch. Under the 2008 Constitution, the country remains 'quasi-democratic' in the sense that the military retains a "*disproportionate prerogative vis-à-vis any elected civilian government*".⁸

² Gravers, M. (2007) Exploring ethnic diversity in Burma. NIAS press.

³ Crouch, M. (2014) The layers of legal development in Myanmar. Melissa Crouch and Tim Lindsey (eds) Law, Society and Transition in Myanmar. Oxford: Hart Publishing

⁴ South, A. (2013) Mon Nationalism and Civil War in Burma: The Golden Sheldrake. Routledge.

⁵ Jolliffe, K. (2015) Ethnic Armed Conflict and Territorial Administration in Myanmar. The Asia Foundation. Accessed 09.05.18 at: <http://asiafoundation.org/publications/pdf/1521>

⁶ Srivinas, S., and Hlaing, S., (2015). Myanmar: land tenure issues and the impact on rural development. Food and Agriculture Organisation. Accessed 22.04.18 at: http://www.burmalibrary.org/docs21/FAO-201505Myanmarland_tenure&rural_development-en-tpo-red.pdf

⁷ Jones, L. (2014) The political economy of Myanmar's transition. Journal of Contemporary Asia, 44(1), 144-170.

⁸ Than, T.M.M. (2016) Myanmar's general election 2015: Change was the name of the game. Southeast Asian Affairs, p.241. See also: International Commission of Jurists (2013) Right to Counsel: The Independence of Lawyers in Myanmar. Accessed 05.05.18 at: <http://www.refworld.org/docid/530f07694.html>

1.2 Rationale, aims and objectives

Children constitute an estimated 34% of the population in Myanmar.⁹ Like in many other parts of the world, children are, at face value, cherished and at the centre of society and daily life. Through working with a number of different lawyer groups across Myanmar, the writer has observed a lack of structural or behavioural understanding and sympathy towards children accused of criminal behaviour. Instead of being confronted with a formal justice system that extend diversionary measures, compassionate or restorative justice, children are often punished harshly and subjected to unlawful treatment and practices.

Currently, very little evidence-based research focusses on children in conflict with the law in Myanmar¹⁰. With the exception of a study commissioned by UNICEF examining diversionary measures across south-east and pacific nations. However, Myanmar is only partially considered and the study is largely based on anecdotal evidence¹¹. There is a national normative framework which offers some safeguards for children in conflict with the law. Despite this, anecdotally it appears that protective measures and rights are very often not adhered to. As a result, this study will aim to answer the following questions:

1. What are the factors that decide different venues for justice for children in conflict with the law?
2. What are the issues and barriers faced by children in conflict with the law?
 - a. What are the structural/institutional and barriers?
 - b. What are the behavioural and social barriers?
3. What are the enablers that facilitate the rights of children in conflict with the law in accessing justice?
 - a. What are the the structural and institutional enablers?
 - b. What are the behavioural and social enablers?

⁹ UNICEF (2015) Myanmar Child-Centered Risk Assessment. Accessed 20.05.18 at: [https://www.unicef.org/myanmar/Myanmar_ChildCentered_Risk_Assessment_\(ENG\).pdf](https://www.unicef.org/myanmar/Myanmar_ChildCentered_Risk_Assessment_(ENG).pdf)

¹⁰ Second Tap Root (2018) Children and the Rule of Law. Justice to Rule of Law Project. March 2018 (in Burmese)

¹¹ UNICEF (2017) Diversion not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific. Accessed 10.05.18: https://www.unicef.org/pacificislands/UNICEF_EAPRO_2017_Diversion_not_Detention.pdf

1.3 The research context¹²

Myanmar, formerly known as Burma until 2008 when the country's name was changed through a controversial referendum, is the second largest country in Southeast Asia. It has total land mass of 676,578 square kilometres and spreads from the Himalayan foothills in northern Kachin State to the southern Andaman Islands in Taninthary region. Myanmar shares borders with five other countries; Bangladesh and India to the west, the People's Republic of China to the northeast, Lao's People's Democratic Republic to the east and Thailand to the southeast. The rest of Myanmar's borders are constituted by an impressive 2,800 km coastline.

Administratively, Myanmar is divided into seven regions and seven states as set out in Figure 1. The seven states are mainly populated by minority ethnic groups, the main ones being; Karen, Mon, Shan, Kachin, Chin, Kayah, Rakhine and Rohingya. The seven regions are primarily inhabited by the main ethnic group, the Bamar. Myanmar's 135 different ethnic groups make it one of the most diverse countries in the world.

The religious make-up is equally diverse with a Buddhist majority but also Muslim, Christian, Hindu and animist minorities. Estimates as to Myanmar's total population vary a great deal and range between 48 and 60 million people.

From an economic point of view, Myanmar is one of the poorest countries in South-East Asia. It is nevertheless one that benefits from particularly rich natural resources and fertile lands. Agriculture remains the primary source of income for 75% of the population who are small-scale farmers.¹³

The fieldwork for this research was undertaken in Yangon and Mandalay which are respectively the first and second largest cities in Myanmar¹⁴.

¹² Unless otherwise stated, all information within the following section has been extracted from the Myanmar Information Management Unit, see: <https://themimu.info/>

¹³ LIOH et al (2017) A Promise Unfulfilled: a critique of the Land Reinvestigation Committees. November 2017

¹⁴ See Figure 1 for a country wide map of Myanmar. Source: Myanmar Information Management Unit.



Figure 1: Map of Myanmar¹⁵

¹⁵ Source: Myanmar Information Management Unit - <https://themimu.info/>

Yangon, formerly Rangoon, sits on the Andaman Sea coast within the Bay of Bengal.¹⁶ The Yangon region covers 10,171 km² and is divided into 45 townships. It is Myanmar's most densely populated area with an estimated 5.9 million people. An estimated 4 million people live in the city of Yangon, the highest number of urban dwellers in Myanmar.



Figure 2: Map of Yangon region

¹⁶ See Figure 2 for a map of the Yangon region. Source: Myanmar Information Management Unit

Mandalay Region is in Myanmar's dry-zone in the centre of the country and sits on the Irrawaddy river.¹⁷ The city of Mandalay is Myanmar's second biggest and has an estimated population of 1.2 million people. The Mandalay region covers 29,686km² and is divided into 28 townships.

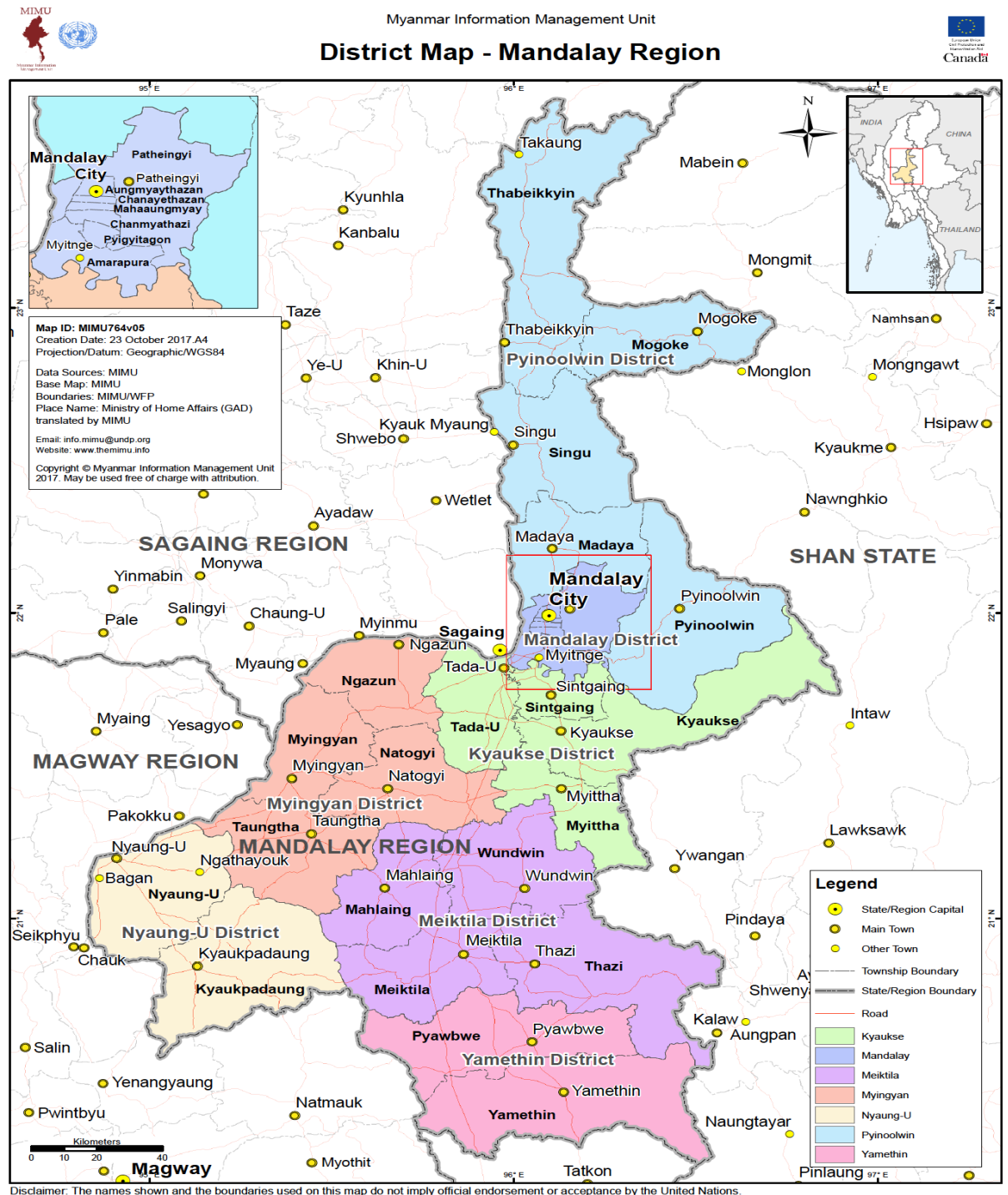


Figure 3: Map of Mandalay

¹⁷ See Figure 3 for a map of the Mandalay region. Source: Myanmar Information Management Unit.

Chapter 2: Literature review

2.1 Myanmar's legal systems

Myanmar's justice system is plural in its nature. This means that the state-led legal structures exist in parallel to, or sometimes as hybrid with, customary, community or religious justice mechanisms¹⁸.

The formal legal system is based on a combination of traditional laws and customs¹⁹, the British colonial common law system and further layers of evolution and deconstruction during the different periods of authoritarian regime²⁰. The system focusses on 'rule by law' rather than enforcing principles of 'rule of law' i.e. administering justice fairly and with a view to meeting the needs of individuals and communities²¹. This has resulted in a complex, biased and untrusted system²² which, despite apparent democratisation since 2011, continues to form part of the implementation of what could be termed a stealth authoritarian state.²³

The judicial arm of government is not independent: courts are under the influence of the military and its powerful associates and used as a venue to control as well as assert power. Corruption is endemic: payments are made for favourable judgments and informal financial settlements used to silence victims or complainants²⁴;

"Corruption is one of the greatest hindrances in the administration of justice [in Myanmar]. It is widespread, both in the courts and the police mechanism."²⁵ It is estimated that 70 per cent of judges issue "orders in part or in full on the basis of payments received from parties coming before them"²⁶.

¹⁸ UN Women (2016) Voices from the Intersection: Women's Access to Justice in the Plural Legal System of Myanmar. Accessed 05.05.18 at:

<http://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar%20Research%20Report.pdf>

¹⁹ Kham, N. Y. (2014). An Introduction to the Law and Judicial System of Myanmar (No. 001). Myanmar Law Working Paper Series, Working Paper. See also: Oo, K. K. (2009) The Best Interests of the Child: Myanmar Customary Law Perspective, Universities Research Journal 2009, Vol.2, No.9 Assistant Lecturer, Dr. Department of Law, East Yangon University

²⁰ Crouch, M. (2014) The layers of legal development in Myanmar. Melissa Crouch and Tim Lindsey (eds) Law, Society and Transition in Myanmar. Oxford: Hart Publishing.

²¹ Cheesman, N. (2015) Opposing the Rule of Law: how Myanmar's courts make law and order. Cambridge: Cambridge University Press.

²² Ibid, See also: Justice Base (2017): Behind Closed Doors: Obstacles and Opportunities for Public Access to Myanmar's Courts. London: Justice Base.

²³ Varol, O. O. (2014) Stealth Authoritarianism. Iowa L. Rev., 100, 1673.

²⁴ Cheesman (2015)

²⁵ San, K. M. (2012) Critical issues for the rule of law in Myanmar. Myanmar's Transition: Openings, Obstacles and Opportunities, 217-30; p.223

²⁶ Cheesman, N. (2012) Myanmar's courts and the sounds money makes. Myanmar's Transition: Openings, Obstacles and Opportunities, 231-248; p. 232

The use of torture, not as a means of punishment, but as a means of obtaining a confession or compliance of the detained person, known as '*judicial torture*', is a prominent and common thread in court proceedings in Myanmar²⁷. The practice is not officially endorsed but instead driven by the police seeking to ensure that the '*procedural game*' goes their way.²⁸

Alongside the formal legal system, community-based dispute resolution systems deal with the resolution of minor disputes and crimes at a village or township level. These are led by communities and often, but not always, facilitated by General Administration Department (GAD) officials, known in urban areas as Ward Tract Administrators (WTAs)²⁹. It is worth noting that the GAD falls under the authority of the Ministry of Home Affairs which is military controlled³⁰. Research confirms that these actors don't follow the law and act as brokers or negotiators rather than adjudicators³¹.

The distrust of the formal legal system, conflict, religion and ethnic diversity have resulted in individuals and communities often relying on alternative systems to settle disputes.³² These are varied and diverse and range from disputes being settled with the assistance of low-level government officials (as mentioned above), by ethnic armed groups in areas they control to customary or religion-based systems.

Harper (2011) notes that this diversity is not unusual. It is present across post-colonial states with alternative forms of justice manifesting themselves as, for example; "*indigenous, customary and religious legal orders or community based dispute resolution mechanisms*"³³.

²⁷ Cheesman, N. (2015) *Opposing the Rule of Law: how Myanmar's courts make law and order*. Cambridge: Cambridge University Press; p. 134

²⁸ *Ibid*; p.135

²⁹ Kyed, H.M. (2017) *Justice Provision in Myanmar. Reforms need to consider Local Dispute Resolution*. DIIS Policy Brief. ; Denney, L., W. Bennett and Khin Thet San (2016): *Making Big Cases Small and Small Cases Disappear. Experiences of Local Justice in Myanmar*, MyJustice report, November 2016.

³⁰ See Article 201 Constitution of the Union of the Republic of Myanmar 2008

³¹ Kyed 2017; p.2

³² Kyed, H.M et al (2018) *Special Issue on Everyday Justice*. Independent Journal of Burmese Scholarship. May 2018. Volume 1, no. 2. Accessed 14.09.18 at: <http://journalofburmesescholarship.org/issue-2.html#pagebottom>

³³ Harper, E. (2011) *Working with customary justice systems: post-conflict and fragile states*. Rome: International Development Law Organization; p.17

2.2 Children in conflict with the law in Myanmar

This paper will define children in line with the United Nations Convention on the Rights of the Child (UNCRC): “*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*”³⁴. Myanmar law defines a child as any person who is under the age of 16 years³⁵ and a youth as any person between the ages of 16 years and 18 years³⁶.

The question of what constitutes ‘*criminal*’ behaviour is informed in most cultures by what is socially acceptable which is then transmitted into law or custom³⁷. Myanmar’s criminal laws comprise primarily of the colonial Penal Code³⁸ and a number of ‘special laws’ which focus on thematic issues such as, for example, drug laws³⁹. There are of course a number of procedural norms which govern implementation⁴⁰ of the substantive criminal laws.

Children in conflict with the law can be defined as: “*any boy/girl who comes in contact with law enforcement authorities because he/she is alleged as, accused of, or recognized as having infringed the criminal law*”⁴¹. This paper will explore a slightly broader demographic than that definition and include children who are accused of criminal behaviour but who come into contact with community-based systems.

At an international level, Myanmar has acceded to the United Nations Convention on the Rights of the Child (“UNCRC”)⁴². Accession creates a binding obligation upon signatory states⁴³. The UNCRC provides a number of principles which underpin juvenile justice, notably, but not limited to; a child’s best interest being a primary consideration, to be treated with dignity and compassion, non-discrimination and equality before the law, a right to be heard, freedom from torture or violence as well as incarceration as a measure of last resort⁴⁴. There are number of other relevant

³⁴ Article 1 of the United Nations Convention on the Rights of the Child 1989

³⁵ s.1(a) 1993 Child Law

³⁶ s.1(b) 1993 Child Law

³⁷ Kyed (2018)

³⁸ Which has been amended on a number of occasions, most recently 2017, but which substantively remains the same.

³⁹ See: Penal Code 1861 and Myanmar Narcotic Drug and Psychotropic Substances Law 1993.

⁴⁰ See, for example: Criminal Code of Procedure 1898

⁴¹ UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007) Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, Accessed 05 May 2018 at <http://www.refworld.org/docid/4670fca12.html>

⁴² 15 July 1991

⁴³ Accession is the act of ratifying a treaty after it has been negotiated and signed (Art 14(1)). Arts.10 and 18, Vienna Convention on the Law of Treaties 1969 “Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act.”

⁴⁴ UNCRC General Comment No. 10 (2007)

international texts which apply specifically to juvenile justice⁴⁵ as well fair trial rights, which apply to any person in contact with a criminal justice system⁴⁶.

At a national level, legislation that is directly relevant to children in conflict with the law comes in the form of the 1993 Child Law and secondary legislation implementing it: 2001 Rules Relevant to the Child Law. The general criminal law framework mentioned above will also apply to children at times. It is understood that a revised Child Rights Bill is being drafted but has yet to be gazetted or presented to Parliament for debate/approval.

The domestic system and normative framework is very clearly punitive in its nature. As alluded to above, there is anecdotal evidence that suggests that measures which are in the child's best interest or which are restorative are very often ignored or not implemented.

Research which has focussed on perceptions and attitudes towards justice in Myanmar, but which does not specifically consider children in conflict with the law, concludes that;

*"...community members routinely said [the aim] was 'to make big cases small and small cases disappear'. This captures a common reality of local experiences of justice in Myanmar: that disputes or injustices are not reported, are downplayed or are resolved at the lowest level possible, often at the expense of wider substantive justice."*⁴⁷

In terms of customary or community based forms of juvenile justice, little tangible information is available on the topic is known at the time of completing this study⁴⁸. Research in other post-colonial developing countries suggests that customary or alternative forms of justice often do not meet standards required as they; focus on social harmony, lack predictability, discriminate and abrogate international human rights and criminal justice standards.⁴⁹

⁴⁵ For example, the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (United Nations, 1985) and the 1990 Guidelines for the Prevention of Juvenile Delinquency (also referred to as "The Riyadh Guidelines") (United Nations, 1990)

⁴⁶ Amnesty International. (2014) Fair Trial Manual. Second Edition. Accessed 15.04.18 at: <https://www.amnesty.org/en/documents/POL30/002/2014/en/>

⁴⁷ Reference the Denney 2016 report

⁴⁸ It is understood that a publication focussing on community-based juvenile justice in Hlaingtayar Township in Yangon is in the process of being prepared by Terre des Hommes – Lausanne.

⁴⁹ Harper (2011)

2.3 Unpacking justice chains

Research and programming in the field of ‘rule of law’ or ‘justice’ has traditionally taken a technocratic, legalistic and ‘top-down’ approach⁵⁰ which focusses on state-led legal systems at the exclusion of alternatives used by individuals and communities⁵¹. The lack of evidence-based research relating to the juvenile justice system and the plurality of venues in which justice is administered justifies adopting a wide lens in this context.

A political economy analysis (PEA) of a justice issue brings in the political, institutional and relational aspects of justice and law. Essentially, a PEA is about understanding how change is driven by politics and power relations that are context specific⁵². In particular, it provides a framework to consider *“the incentives, relationships, distribution, and contestation of power between different groups and individuals”*⁵³.

There is a growing body of research that is shifting the analysis of justice systems towards a more holistic and problem-driven approach. In particular, there is an acknowledgement that *“advances in rule of law and in the quality of justice provision are historically the result of political and institutional change, as well as changes in wider attitudes and beliefs in society”*⁵⁴. Applying a PEA approach to justice issues allows a more holistic understanding of the issues, their nature and the context specific approaches that might be able to address them⁵⁵. Denney and Domingo have developed a framework which uses a PEA approach to justice termed a *‘justice chain analysis’*.⁵⁶ The process provides a lens *“to identify the concrete ways [individuals] make use of the law and justice mechanisms”* to resolve disputes and seek redress.⁵⁷

The framework provides for two stages of analysis. First of all, the justice chains must be identified and broken down. Secondly, the “structural and institutional impediments of reform” (structure) *“as well as the interests, incentives and capacity*

⁵⁰ Golub, S. (2003) Beyond rule of law orthodoxy: the legal empowerment alternative (Vol. 41). Washington, DC: Carnegie Endowment for International Peace.

⁵¹ Harper (2011)

⁵² Ibid p.49

⁵³ Mcloughlin, C. (2014) Political economy analysis: Topic guide (2nd ed.) Birmingham, UK: GSDRC, University of Birmingham; p.2

⁵⁴ Denney, L., P. Domingo (2017) Political economy analysis: guidance for legal technical assistance. ROLE UK. Accessed 05.05.18 at: <https://www.odi.org/publications/10710-political-economy-analysis-guidance-legal-technical-assistance>

⁵⁵ Ibid

⁵⁶ Domingo, P., & O’Neil, T. (2014) The politics of legal empowerment: Legal mobilisation strategies and implications for development. London: ODI.

⁵⁷ Denney, L., P. Domingo (2017); p.18-19

for action of different stakeholders” (agency) must be identified and analysed⁵⁸. Finally, with the particular context in mind, possible strategies and solutions can be identified and matched to the best suited justice actors.

There are a number of benefits to adopting a ‘justice chain’ framework; The initial process of breaking the justice mechanism process down into different stages allows a detailed analysis of where there are blockages, their nature (i.e. behavioural or institutional) and what opportunities there are to overcome them. Secondly, the framework provides for taking a step back and considering the wider social and political context and establishing whether the stage specific blockages and opportunities “are mostly located within the justice chain or result from the broader political settlement.”⁵⁹

Stage 1: Identifying the justice chains

In the context of criminal justice and incorporating the possibility of plural venues, the justice chain framework breaks down the stages of dispute resolution mechanisms into; reporting, adjudication/mediation, implementation and outcome. An example framework for justice chain involving the formal legal system, community-based dispute resolution and customary justice can be found below at Figure 4.

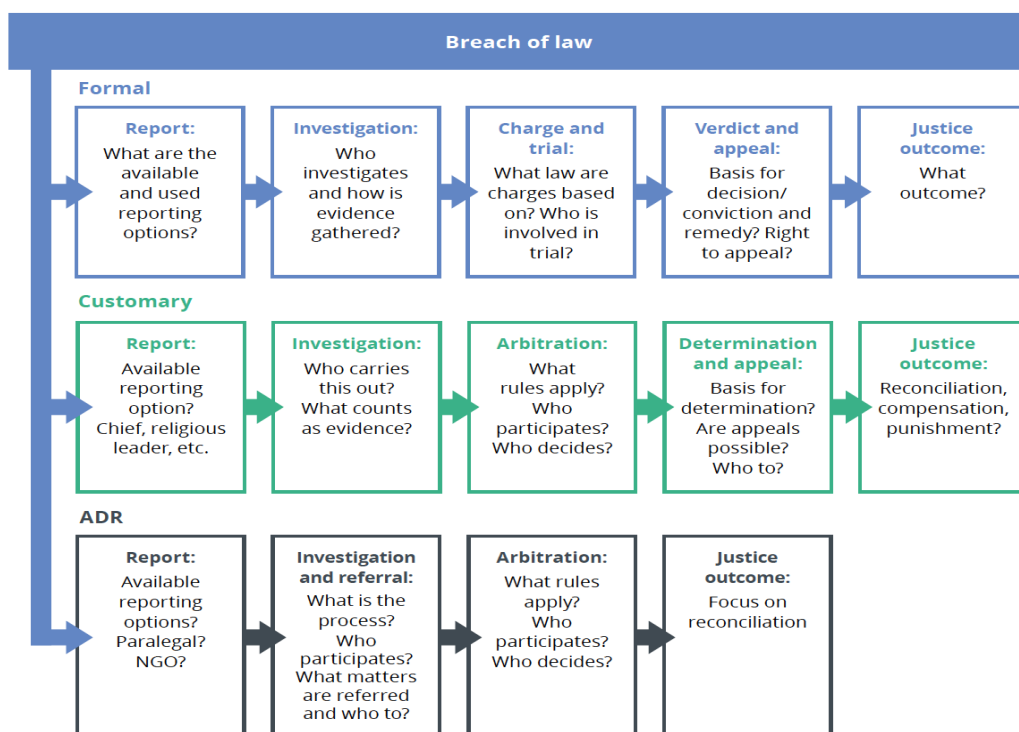


Figure 4: Justice Chain framework – multiple systems

⁵⁸ Ibid p.14

⁵⁹ Domingo, P., & O’Neil, T. (2014)

Stage 2: Unpacking the political economy of each stage

Once the justice chain has been disaggregated, the second stage of the analysis moves on to understanding the wider socio-political factors affecting the different justice actors. This is done by looking at the power dynamics between different actors on both a structural and behavioural level. Structures consider the institutional and deeply engrained factors and features that determine the rules of the game from a political and power⁶⁰. The agency element refers to the power or will of different actors over a particular issue within the justice chain. To achieve this, Denney suggests considering the drivers and interests of various justice actors at different stages of the justice chain i.e. “How do the behaviours of actors shape the problem and what motivations and interests shape that behaviour?”⁶¹ Figure 5 below provides a helpful schematic framework through which to consider the issues of structure and agency through a political economy lens.

How to analyse the political economy of each state of the security and justice chains

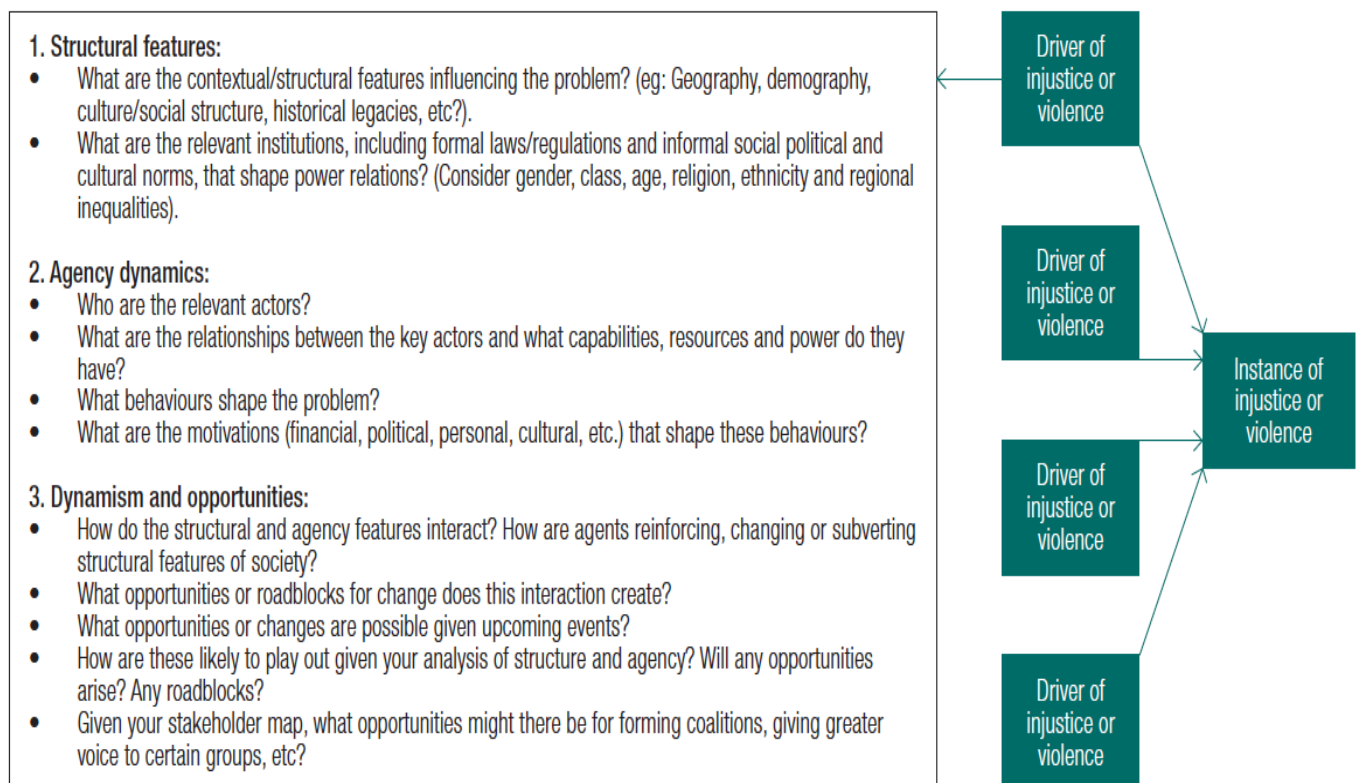


Figure 5: Unpacking the political economy of each stage of the justice chain

⁶⁰ See: Denney (2016) and Leftwich, A. (2011) 'Thinking and Working Politically: What Does It Mean, Why Is It Important and How Do You Do It?' in Politics, Leadership and Coalitions in Development: Policy Implications of the DLP Research Evidence, Research and Policy Workshop, Frankfurt, Germany, 10-11 March, pp. 3-11.

⁶¹ Denney, L. (2016) Using political economy analysis in conflict, security and justice programmes. Accessed 14.05.18 at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10362.pdf>; p.11

Chapter 3: Research design and methodology

The conceptual framework underpinning this research is set out above (figures 4 and 5). The methodology will use a mixed and sequential strategy.

The initial strategy for this research and its design were the product of a detailed examination of the literature, informal discussions with subject matter experts and the preparation of a research proposal. Those activities brought to light the lack of evidence based research exploring the challenges faced by children in conflict with the law in Myanmar.

3.1 Methodology, sample selection and data collection

A qualitative approach was adopted for the semi-structured interviews with seventeen key informants who were drawn from a purposive sample. Semi-structured face-to-face interviews offer a good opportunity to analyse the nature of a problem⁶² and identify potential trends for future investigation. They are also particularly well suited to understanding difficult and complicated issues⁶³.

The interview questions and structure were initially based upon reviews of the literature, the justice chain framework and structural or behavioural barriers and enablers⁶⁴. The aim of the interviews was to:

- a) identify the different justice chains that are used to resolve/address alleged criminal behaviour;
- b) explore the factors deciding why certain children were dealt with in the community system whilst others ended up in the formal system;
- c) understand the nature of the barriers and enablers encountered by children in conflict with the law in accessing justice;
- d) identify strategies and activities adopted by justice actors to address the barriers or foster enablers.

⁶² Walliman, N. (2016) Social research methods. 2nd Edition. Sage Publishing.

⁶³ Bowling, A. (2014) Research methods in health: investigating health and health services. McGraw-Hill Education (UK).

⁶⁴ Denney & Domingo (2017)

On the basis that this research is targeting a particular group, i.e. children in conflict with the law, and the writer is in contact with justice actors in this particular field, a purposive sampling approach was adopted⁶⁵. This was used to identify key informants, for example; specialist NGO actors, technical expert(s) and lawyers. Key informants identified for purposive sampling were asked to suggest other possible research participants⁶⁶.

In-depth semi-structured interviews were conducted with seventeen subject matter experts in Yangon and Mandalay over the course of July and August 2018. Translators were used for the interviews where research participants identified such a need. Detailed notes were taken during interviews which were then transcribed into digital format.

3.2 Ethical considerations

The nature of the research question, i.e. understanding the experiences of children in conflict with the law in accessing justice, falls in line with an interpretivist epistemology and constructivist ontology⁶⁷. This research did raise a number of ethical issues that needed to be carefully considered prior to and during implementation.

The analysis of systems of justice by an individual who is licensed to and has experience of working in a different jurisdiction could lead to the influence of cultural identity⁶⁸. This is particularly pertinent in this situation as the writer is a qualified lawyer from the jurisdiction of England & Wales which was also the basis for the legal framework imposed on Burma during the colonial period between 1824 and 1948⁶⁹. Any assumptions as to how the system or procedures are or 'should' be implemented will need to be carefully considered with this issue in mind.

This research ultimately focusses on children. Confidentiality and anonymity for children referred to in any public material where there is no consent is essential. In addition, due to Myanmar's successive and recent authoritarian regimes, individuals

⁶⁵ Purposive selection "is where the researcher selects what he or she thinks is a 'typical' sample based on specialist knowledge or selections criteria" (Walliman 2016; p. 115)

⁶⁶ This is known as "snowball sampling" where the participants selected purposively identify and recommend other possible participants. See: Bryman, A. (2012) Social research methods. 4th ed. New York: Oxford University Press.

⁶⁷ Walliman (2016)

⁶⁸ Mikkelsen, B. (2005) Methods for development work and research: a new guide for practitioners. Sage.

⁶⁹ Lange, M. K. (2004) British colonial legacies and political development. World Development, 32(6), 905-922.

have been targeted or persecuted for speaking up and criticising the State. For example, lawyers have lost their licenses to practice for speaking out against ‘the system’⁷⁰. Confidentiality and anonymity were issues at the forefront of participants minds. Reassuring key informants about confidentiality, the possibility of anonymity and the safeguards to be put in place was of particular importance. With a view to mitigating those issues:

- Anonymity was offered and great care was taken to ensure that this final piece of work does not identify key informants or any individuals they refer to, particularly children, without appropriate consent.
- Secure information technology was used (e.g. participant’s details and interview notes were kept on secure remote cloud storage platform).
- Hand written notes with identifying information were kept in a secure location and will be destroyed following submission.
- Translators were carefully selected and asked to sign a declaration of confidentiality.

Then there is the issue of consent. Each research participant was given an information sheet⁷¹ and a verbal explanation of its contents at the beginning of each interview. All gave clear and unequivocal consent to be interviewed at the beginning of each meeting which was then confirmed again at the end of the interview following a discussion about confidentiality, risk and anonymity.

3.3 Scope, challenges and limitations

Due to the scale of this study as well as the complexity and diversity of the Myanmar context, it was only possible to research two regions; Yangon and Mandalay. These were chosen on the basis that they are the both urban areas and the most populated in the country.

⁷⁰ International Commission of Jurists (2013) Right to Counsel: The Independence of Lawyers in Myanmar. Accessed 05.05.18 at: <http://www.refworld.org/docid/530f07694.html>

⁷¹ A copy of the information sheet can be found at Annexe 3. A Burmese copy was made available to participants.

Based on the contents and topics of discussions, all participants chose to remain anonymous. This is perhaps reflective of the repressive history in Myanmar as well as a culture of fear of being critical of the state and in particular, military-affiliated officials such as the Myanmar Police Force.

A common thread throughout discussions with lawyers was frustration at their lack of independence based on the fact that the Supreme Court, and therefore the judges that they appear before, are in control of their licences. Interviewees expressly stated they were reassured by the veil of confidentiality and anonymity and welcomed the opportunity to openly discuss barriers for children in accessing justice.

All of the participants to this research have Burmese or another minority ethnic language as their mother tongue. Some participants chose to conduct the interviews in English, others through a Burmese translator. It is inevitable that some of the detail and nuance was lost in translation. This was mitigated by selecting translators who had experience, were vetted and who were briefed before participating in interviews.

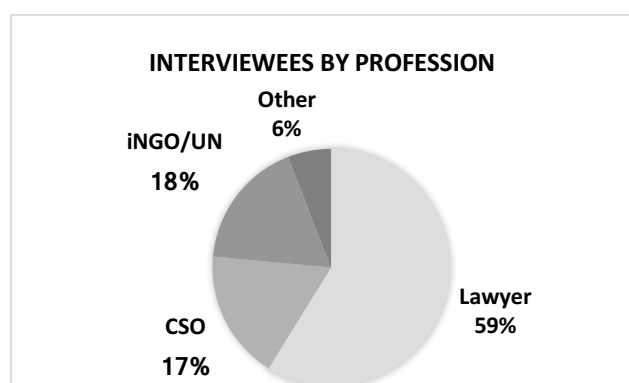
The sample size of seventeen key-informants is relatively small but there is a fair split of lawyers and non-lawyers as well as from the two targeted regions (Yangon & Mandalay). At the outset, it had been intended to gather information about the views and experiences of children in conflict with the law through lawyers who were or had represented them in court proceedings. A decision was made to abandon that approach on two counts. First, lawyers in Myanmar and particularly those that could be termed as 'legal aid' or 'pro-bono' are extremely busy. Asking them to interview children would have taken them away from their important work and was deemed unproductive and potentially harmful to their clients. Secondly, a report prepared by a local CSO in Mandalay (only available in Burmese) was identified which analyses a number of dimensions of the lives, views and experiences of children detained in training schools.⁷²

⁷² See: Second Tap Root (2018)

Chapter 4: Research findings and discussion

4.1 Key characteristics of interviewees and case studies

A total of 17 people were interviewed during the period between July and August 2018 in Yangon (65%) and Mandalay (35%) with seven being women and ten men. Just under two-thirds were lawyers with the others being from CSOs, NGOs/UN Agencies or other professions. All interviewees are Myanmar nationals.

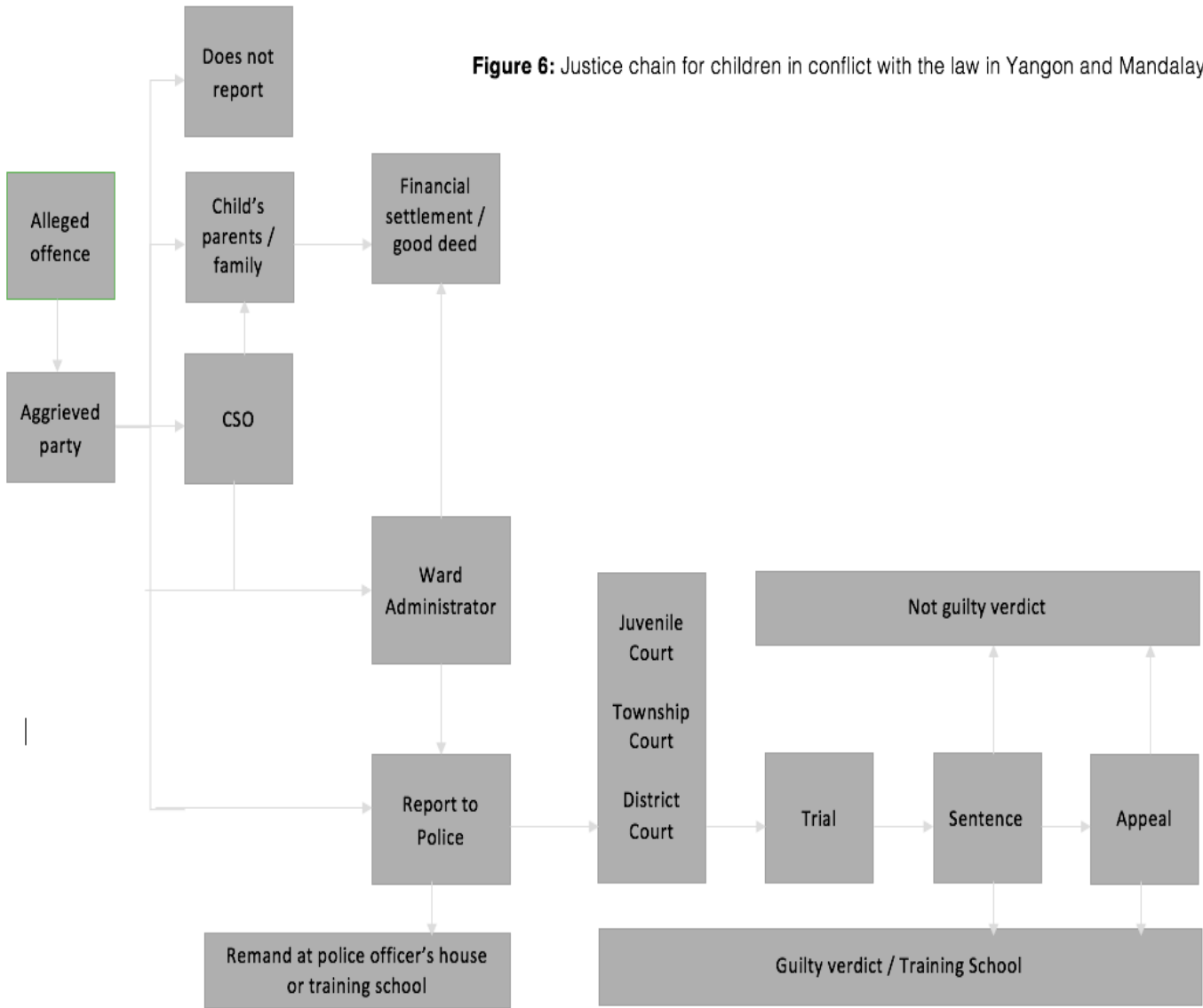


Ten in-depth case studies were gathered during interviews. Three involved children who had been through the community system and six ended up involved in court proceedings in the formal system. One child went through through both systems. All the children accused of crimes, with some cases involving multiple suspects, were boys except for two girls and their ages ranged from 11 to 16 years. Types of offences ranged from petty theft to murder.

4.2 What are the justice chains for children in conflict with the law?

Based on interviews, case studies and desk-based research of national legislation, research reports and grey literature, it has been possible to establish the justice chains for children in conflict with the law in Yangon and Mandalay regions which is set out in Figure 6 below.

Figure 6: Justice chain for children in conflict with the law in Yangon and Mandalay



4.2.1 Community system: how does it work?

Interviewees reported that for petty offences, aggrieved parties often go straight to the child’s family to try and resolve the dispute and in some cases do not report at all. Alternatively, the aggrieved party will report the alleged offence directly to the Ward Tract Administrators or do so via a community elder or civil society organisation i.e. “facilitators”⁷³. Most crimes, including the more serious cases, go through the WTA. Interviewees reported the WTA as a powerful figure in the community.

Once the case is reported, the WTA has separate discussions with the aggrieved party and the child’s family. A number of interviewees reported that the child,

⁷³ Denney et al (2016); 32

particularly if he or she is an adolescent, will also be present during the meetings. The WTA essentially acts as a '*broker*' with the focus being on compensating the aggrieved party for his or her financial loss. This corresponds with research focussing on community level disputes⁷⁴.

A bigger meeting is usually held during which the child, his or her family and the aggrieved party meet in the presence of the WTA. Interviewees reported that these meetings are generally in a very relaxed atmosphere, people remaining calm and focussing on trying to resolve the issues. Some participants reported that the child is given the opportunity to speak or voice his or her opinion. If a settlement is reached, then a financial payment is made to the aggrieved party and the matter concludes. In some cases, participants reported children also having to perform a good deed. If a settlement is not reached, then either the matter is forgotten or, in some cases, it escalates to the formal system.

4.2.2 Formal system: how does it work?

There are four levels of tribunal ranging from the Township level to the Supreme Court of the Union of Myanmar. In Yangon and Mandalay there are special Juvenile Courts with jurisdiction depending on the location of the alleged offence. The Juvenile Court in Yangon covers twenty townships and the Mandalay Juvenile Court covers four townships. In the remaining 306 townships in Myanmar, juvenile cases are dealt with in the mainstream Township and District Courts. Respondents reported that most cases are heard in the Township Court with some more serious cases, such as murder, being heard in the District Courts. The High Court and Supreme Court act as appellate courts.

Procedure in criminal matters is governed by the Criminal Code of Procedure 1898 (most recently amended in 2017). The following is a simplified outline; for a more detailed representation, applicable to adults, see Annexe 1. A flowchart for juvenile cases would differ slightly but is not available.

Following arrest, the police have 24 hours to bring the accused before a Judge to sanction the investigation. Complaints are either made by private individuals or the Police. Cases are prosecuted by Law Officers (i.e. state prosecutors) and proceedings are overseen and decided by the Judge. Administrative and operational matters administered by the court clerk.

⁷⁴ Kyed et al (2017)

The case then proceeds to hearing the prosecution evidence with the defence being given the opportunity to cross-examine and question the evidence presented. The judge makes a decision whether to 'frame the charge' and the defendant is asked to enter a plea of guilty or not guilty.

If the plea is guilty the matter proceeds to sentencing. If it is not guilty, the defence is given the opportunity to recall prosecution witnesses and present its own evidence. The judge then determines the case and, depending on the verdict, passes a sentence.

4.3 Coding frequency & data analysis

Following key informant interviews and transcription, typologies were identified and refined through an iterative and inductive process. Codes were then numbered 1 to 35 and used to establish thematic frequency which in turn enabled conversion into percentiles. The results are set out below in Table 1 at page 30.



Figure 7: Word cloud representation of coding typologies⁷⁵

⁷⁵ Word cloud representations visualise the frequency distribution of words within textual data. See Walliman (2016); p.192

Table 1: Codes, themes, typologies and frequency

Code	Interview themes & typologies identified	Frequency
	Factors deciding community versus formal system...	
1	The formal system is unsympathetic and punitive towards children	95%
2	Less serious cases end up in the community system	88%
3	More serious cases end up in the formal system	76%
4	Focus in CS on negotiation, harmony and maintaining family life/education	70%
5	Communities don't trust justice actors because of corruption and impunity	65%
6	Children from poor and disadvantaged groups end up in the formal system	59%
7	No corruption money to be made out of juvenile cases	53%
8	Police don't like dealing with juvenile cases - too many procedures	18%
	Barriers...	
9	Rights and protections in national legislation are not respected	82%
10	Children from poor backgrounds are more likely to be discriminated	65%
11	Corruption is main barrier for children accessing justice in the formal system	65%
12	Routine adjournments as police do not attend court	59%
13	Transportation to & from court is lengthy and driver for forced confessions	59%
14	There is no culture of assuming that the child is innocent until proven guilty	58%
15	Lack of opportunity for bribes is the main driver of forced confessions	35%
16	Children are routinely not given bail	35%
17	Lack of independent lawyers willing to take on cases involving children	18%
18	Police fail to make adequate enquiries to determine the child's age	18%
	Enablers....	
19	Activities promoting diversion i.e. keeping children out of the formal system	41%
20	Legal representation from lawyers who are focused on child rights and tackling corruption in the courts	29%
21	Funding and resources from donors	29%
22	Children being made aware of their rights	12%
23	Support from Costs that provide resources	12%
	Outcomes...	
24	Community system is much better for children in terms of outcomes	76%
25	Attitude of impunity & lack of resources result in forced confessions	65%
26	Training schools are under resourced, abuse, violent and unhealthy	65%
27	Most children in formal system are found guilty/detained in training schools	58%
28	Corruption results in unsympathetic and punitive outcomes for children	53%
29	Community system can end up with the child being discriminated	12%
	Recommendations...	
30	There needs to be complete reform of how the police deal with juvenile cases	47%
31	More CSOs focusing on monitoring and creating a culture of accountability	35%
32	Activities that tackle corruption in the formal system needs to be promoted	29%
33	More lawyers working on juvenile cases and legal aid funding for them to do it	29%
34	Make community dispute resolution mandatory for the majority of offences	23%
35	Time spent on remand should count towards sentence	23%

4.4 What factors decide whether a child in conflict with the law ends up in the community or formal system?

Almost unanimously, interviewees confirmed that individuals and communities prefer the community-based system to the formal legal system. 95% of respondents agreed that the formal legal system is unsympathetic and overly punitive when it comes to children accused of a crime. 65% of participants also brought up the issue of there being a lack of trust in the formal court system which is based on it being biased, corrupt and justice actors behaving with impunity⁷⁶. The result is that communities make every effort to avoid reporting to the police with 70% of respondents confirming that there is a focus on negotiation and discussion as well as maintaining the child's family life and education.

One participant in particular captured this by saying; *“sympathy towards children in a community system results in them not being punished in a way that is detrimental to their development, family life, well-being, education and health. The way in which negotiations and discussions are conducted also leads to aggrieved parties being much more sympathetic towards the children.”*

These findings correspond with other research papers which have focused on attitudes towards justice⁷⁷. The fact that individuals and communities in Yangon and Mandalay focus on keeping cases at the community level raises the need to understand why some children end up in the formal system.

Based on the data collected, there are a number of factors which result in children accused of a crime bypassing the community system with the case being reported to the police and proceeding through the formal system.

There is a clear correlation between the severity of the offence and the venue in which justice is administered. Petty offences are dealt with in the community system (88%) whilst more serious offences are referred directly to the formal legal system (76%). As set out below in Table 2, Participants were asked to list the most common types of offences and categorise them as petty or serious:

⁷⁶ A detailed analysis of the issue of corruption and impunity can be found at sections 4.5.1 & 4.5.2 below at page 35-40.

⁷⁷ See: Kyed et al (2017) and Denney et al (2017)

Table 2: Frequency & rank of criminal offences

Rank (frequency)	Petty offence	Serious offences
1	Theft (s378 Penal Code)	
2	Theft in dwelling (s.380 Penal Code)	
3		Rape
4		Drug offences
5		Murder

According to research conducted by a local CSO in Mandalay, the majority of children interviewed in the training school are detained for petty offences, primarily such as theft⁷⁸. Although this is explained by the fact those are the most common types of offences committed by children, it throws into question the finding above that lesser offences are dealt with in the community system.

This is explained by the second most prominent variable reported as a factor which decides the venue for justice. 59% of participants confirmed that children from poor and disadvantaged groups are more likely to be handed over to the police and prosecuted in the formal system regardless of the type of offence they are alleged to have committed.

When exploring participants' perceptions of what constitutes '*poor and disadvantaged*', the group includes street children, children who do not have legal guardians, repeat offenders and those from very poor families.

One participant succinctly captured the link between poverty and likelihood of being prosecuted in court: "*The poorer you are the more likely you are to end up in court.*" Therefore, we can extrapolate that the likelihood of a child being prosecuted in the formal justice system increases based on the severity of the crime as well his or her social status.

⁷⁸ Second Tap Root (2018); p.20

Case study 1: Theft of a mobile phone – repeat offender

Ko Than was 13 years old from a family that was not rich but also not poor. He went into a shop in the community he lived in and stole a mobile phone. There is CCTV in the shop and the video very clearly identified Ko Than in the act of stealing the phone. The shop owner went to the Ward Tract Administrator and made a complaint.

The WTA, in turn, went to the child's family showed them the CCTV and began the process of negotiating between the two parties. Ultimately a meeting was held and, based on the fact that the child was in school and deemed to usually be of good character, a fine was paid (equivalent to the value of the phone) and the child agreed to become a novice monk for two weeks in the summer holidays.

A few months later, Ko Than was caught stealing a phone from another shop. Again there was CCTV which clearly identified him. The shop owner went to the WTA who upon realising that it was the same child referred the matter to the police.

A case was opened and Ko Than was prosecuted under s.378 Penal Code for theft. Ko Than was represented by a lawyer, was ultimately found guilty and sentenced to two years' detention in a training school.

During interviews, participants also mentioned a number of other factors which affect the the justice venue. There are cases where the aggrieved party pushes or bribes the police to accept the case. As exemplified in Case Study 2 below, situations where the community negotiations break down or where the aggrieved party is not happy with the outcome can also result in a complaint being made to the police and proceeding through the formal process.

Case study 2: Young lovers elope

Ko Shwe was a 15 years old boy, Buddhist and a waiter in a tea shop. His family is relatively poor. Ma Ei was a 13-year-old girl, Muslim and a seamstress in a small shop; her family is slightly better off. Ko Shwe and Ma Ei knew each other for two months before they became a couple. When Ma Ei's family found out about the relationship her father beat her. She went the tea shop where Ko Shwe worked and she said that she wanted to run away. Ko Shwe said to her that they were too young but Ma Ei convinced him. They borrowed a motorbike from a neighbour and went to a village in a township just outside of the city. Ma Ei's father reported her missing to the police and he alleged that Ko Shwe had kidnapped her. Ma Ei's father called Ko Shwe a number of times and made threats of violence but eventually started saying that he would agree for them to be a couple and convinced them to come back.

Ma Ei and Ko Shwe came back and the two families met the Ward Tract Administrator to negotiate. The WTA first of all spoke to Ko Shwe but then also his family. He also spoke to Ma Ei and her family. Ko Shwe's family were proposing marriage but Ma Ei's family did not agree. In the end they were not able to reach an agreement. Negotiations broke down. It was at this point that Ma Ei's father filed a complaint with the police making previously unmentioned allegations of rape against Ko Shwe. Ma Ei was not the complainant, but her father. Ko Shwe was arrested and taken straight to the local training school and detained on remand. Ma Ei refused to give evidence in the case but her father gave hearsay evidence that she had told him that Ko Shwe had raped her. Before a lawyer became involved Ko Shwe accepted that he and Ma Ei had engaged in sexual intercourse. On the basis that Ma Ei was 13 years' old this constitutes statutory rape. If the intercourse is with a child under the age of 16 years, the issue of consent is not relevant; the act of intercourse in itself constitutes rape

Despite Ko Shwe essentially having to plead guilty, the court case went on for six months. There was a hearing every week. Mostly adjournments happened because Ma Ei or her father did not come to court. The medical officer who performed a mandatory medical test even though it was months after the allegations were first made also did not show up. Rape is a non-bailable offence; this is in contradiction to section 41 of the 1993 Child law. Ko Shwe was found guilty and sentenced to two years' imprisonment. He will serve two and a half years in total as time spent on remand does not count towards the sentence.

4.5 Barriers

Barrier /'bærɪə / - A circumstance or obstacle that keeps people or things apart or prevents communication or progress.⁷⁹



Figure 8: Word cloud representation of 'barrier' typologies⁸⁰

4.5.1 Corruption and the formal legal system

"The main problem for children in the courts is that there is no water to be squeezed from that stone."⁸¹

Based on previous research and empirical observations of issues in Myanmar's legal system, it is perhaps not surprising that corruption was raised as a barrier to justice in the formal legal system⁸². It is however striking the frequency at which it was discussed during interviews. Below at Table 3 is a quantitative analysis of the number of times corruption was raised by participants.

⁷⁹ Dictionary, O. E. (2002) Concise Oxford English Dictionary.

⁸⁰ Walliman (2016); p.192

⁸¹ Interviewee 2

⁸² See Cheesman (2015) and San, K. M. (2012)

Table 3: Frequency corruption is mentioned during interviews

Code	Theme	# times mentioned
4	Communities don't trust justice actors because of corruption and impunity.	11
6	It is difficult to demand corrupt payments in juvenile cases	9
11	Corruption is main barrier for accessing justice in the formal system	12
25	Corruption, impunity & lack of resources result in forced confessions	11
27	Corruption results in unsympathetic and punitive outcomes for children.	10
32	Activities that tackle corruption in the formal system needs to be promoted	5
Total	Frequency corruption was mentioned during interviews	58

Interviewees, reassured by anonymity and confidentiality, were very open about this particular problem. 65% of participants considered corruption to be the main barrier for children in formal legal system. A 2011 online poll conducted by Weekly Eleven (a Burmese news periodical) found that 1,580 respondents out of 2,025 (78%) thought that the judicial system is unfair due to bias and corruption⁸³.

Piecing together the information elicited during interviews, it is clear that the juvenile justice system, like the adult criminal justice system, is a business which is fuelled by its money making practices⁸⁴. The system involves all justice actors at all levels; judges, police, law officers (prosecutors), independent lawyers and court clerks.

When asked why corruption in the courts is so prominent, participants gave a range of reasons ranging from the above mentioned quest for financial gain but also that public officials are trying to meet targets to secure promotions. Corruption is often conceptualised and perceived as involving some kind of monetary exchange⁸⁵ but should be considered from a wider angle as “*the abuse of entrusted power for private gain*”⁸⁶. The fact that a police officer or law officer encourages a defendant to accept a guilty plea to shorten proceedings with a view to increasing chances of a promotion

⁸³ Cheeseman (2015); p161 and Weekly Eleven (2011) 11 Dec 2011 www.weeklyeleven.com

⁸⁴ Cheeseman (2015); p. 168-192.

⁸⁵ Jensen, S., & Andersen, M. K. (Eds.) (2017) Corruption and Torture: Violent Exchange and the policing of the urban poor. (1. ed.) Aalborg Universitetsforlag. Accessed 14.09.18: [https://vbn.aau.dk/da/publications/corruption-and-torture\(c387fbc6-d14b-4531-a809-8dc159202761\).html](https://vbn.aau.dk/da/publications/corruption-and-torture(c387fbc6-d14b-4531-a809-8dc159202761).html)

⁸⁶ See <https://www.transparency.org/what-is-corruption#define>

constitutes using their position of power for personal gain. This is also true of the judge that conducts proceedings as quickly as possible to ensure his or her average case length is below target:

“The judges and the police often work as a team. For example, I’ve often seen judges advising the police on how to achieve what they want in court proceedings involving children to get cases dealt with quicker. Judges have targets in terms of how quickly they finish cases and police are assessed on how many convictions they secure.”

Another participant put it more succinctly; *“The police are looking to solve as many crimes as possible to achieve targets not justice.”*

A number of participants confirmed that there is no corruption in the community based system. *“Corruption is everywhere in the formal system. I don’t have any experience of there being any in the community system.”* This is surprising and perhaps based on lack of experience of that system or because participants did not want to criticise that system.

4.5.2 Forced confessions, corruption and violence

Articles 37 and 40 of the UNCRC confirm the fundamental right of children to be free from torture or other cruel, inhuman or degrading treatment or punishment, which is in turn defined by the United Nations Convention Against Torture. It is not proposed here to enter into the very well debated and highly contested legal definition of torture, that has been done in detail and with much more justice elsewhere⁸⁷. It is also not possible within the scope of this piece of research to examine each of the case studies and comment on whether the violence used satisfies the ‘legal’ definition of torture.

Based on the data collected during this study, there is evidence of widespread use of violence to force confessions out of accused children in the juvenile justice process. It also reveals an apparent correlation between juvenile justice, corruption and forced confessions.

Of the seven case studies which involved the police and the formal legal system, five contained elements of emotional and/or physical violence towards child defendants

⁸⁷ See: Kelly, Tobias. (2012) *This Side of Silence: Human Rights, Torture and the Recognition of Cruelty*. Philadelphia: University of Pennsylvania Press. Also: Carver, Richard and Lisa Handley. (2016). *Does torture prevention work?* Liverpool: Liverpool University Press.

with the aim of obtaining a confession. The case studies record a litany of practices that police officers use to elicit confessions from children which have been recorded in other reports/research⁸⁸. This includes; pressurising children psychologically to admit guilt; interrogating them for hours at a time without legal guardians present; depriving them of sleep, making them kneel on gravel for lengthy periods of time; physically assaulting them, tying them up by their hands, spinning them and beating them with bamboo sticks, and; as is recorded in Case Study 3 below, repeatedly rolling iron bars over their shins.

Case study 3: Violence and forced confessions

Two children aged 11 and 12 were on a bus and allegedly stole and sold a mobile phone to sell and split the profits. The police somehow got wind of the allegations and arrested one of the children who then implicated the other. Both children had legal guardians who were not notified of the arrests. The children have since made disclosures that the police physically assaulted them by beating them and rolling iron bars over their shins until the skin peeled off. Whilst doing this, the police were telling them it would stop if they confessed to stealing the phone. Eventually the children said they had stolen the phone.

Whilst not being interrogated, the children were tied up by their hands and ankles and kept in the holding cell in the police station with adults. Both children later reported to their families that they were physically abused by adult inmates whilst at the police station.

Despite both children attending the first hearing with family members, the township judge remanded them both in a training school. Neither of children were represented by a lawyer until the final hearing. The judge accepted the prosecution's evidence based on forced confessions and found them guilty. They were both sentenced to two years' detention at a training school. No avenues of appeal were pursued by the junior lawyer representing them pro-bono.

⁸⁸ See for example Wein, S. et al (1998) Burma: Human Rights Yearbook 1997-1998. Nonthaburi, Thailand : Human Rights Documentation Unit, NCGUB ; Washington, DC. : NCGUB Information Office, 1998.; Chapter 8 p.289

A number of participants linked the use of violence to the issue of corruption. First of all, on the basis that there is often little or no financial benefit to be obtained from a child involved in court proceedings, the police or other justice actors want to bring the judicial procedure to an end as soon as possible so they can focus on other more profitable cases. Perhaps because of the very sensitive nature of this topic, only 35% of respondents confirmed that forced confessions are primarily driven by a lack of opportunity for financial gain.

Interestingly, and particularly in Yangon, 59% of respondents attributed the geography of facilities within the juvenile justice process as a factor which encourages the police to force confessions through violence. The juvenile court in Yangon is based in Dagon Township and the training school where children are held on remand is in Thanlwin Township. The police officer in charge of the case is responsible for transporting a child to and from court. According to a number of interviewees, this can involve between five to eight hours of travel for the police officer who has to bear the cost out of his or her own pocket. Rather than transport to and from the weekly court hearings, police officers resort to forcing a confession from the child bringing the case and the transportation to an end.

It is widely recorded that, as with other military affiliated state-bodies in Myanmar, there is a culture of impunity in the Myanmar Police Force. It has long been one of the blunt instruments used by the colonial and subsequent authoritarian regimes to maintain law and order.⁸⁹ One interviewee who was subjected to judicial torture said:

“Police don’t know how to treat children. The way that they treat them falls in line with wider issues. The police have become accustomed as an institution and as individuals to acting with impunity without being accountable to anyone. They are above the law and the judges. The only way they know how to deal with criminal cases is to physically abuse and torture people into confessing guilt. There is a mentality of impunity but also a lack of capacity – they don’t know how to do real police work.”

The issue of confessions is dealt with in Myanmar law. Paragraph 164(3) of the Criminal Code of Procedure requires the judge to explain the consequences of making a confession to the defendant and must scrutinise whether it is made voluntarily or not.⁹⁰

⁸⁹ Cheesman (2015)

⁹⁰ Jurisprudence on the other hand is less clear. There is inconsistency between colonial case law and post-1962 cases. See: Zan, M. (2000) Two Divergent Burmese Rulings on Criminal Defendants’ Confessions: An Ideological Analysis. U. Tas. L. Rev., 19, 335.

In the context of juveniles, the age, maturity and degree of understanding of the child is of particular importance. False confessions in children have been researched in some detail in western and more developed Asian nations. Statistically, the younger children are the more impressionable and likely they are admitting guilt to a crime for which they are innocent⁹¹. Based on the data collected, there is little evidence of judges, law officers and to a certain extent, independent lawyers, scrutinising the degree of maturity and understanding of the child or the circumstances in which the confession was made.

4.5.3 Rights and protections in national legislation are not respected

There are a number of special protections afforded to children in conflict with the law under national legislation. The Child Law 1993, and in particular section 37 and Rule 64 of the associated rules, prohibit police officers from tying or handcuffing children, maltreating or threatening children who are under arrest, detaining them in the same cells as adults, promptly informing legal guardians of arrest, releasing on bail as soon as possible and producing the child before a judge without delay.

In addition to making the point above that police and other justice actors do not like to deal with juvenile cases because of the lack of financial gain, respondents also spoke about justice actors not liking to have to comply with the special protections and rights that apply to children. One participant described captured the attitude particularly well: *“Juvenile cases are inconvenient for justice actors. They use up additional time and resources.”*

In light of the analysis above in relation to corruption and violence, it is perhaps not surprising that 82% of participants reported that justice actors do not respect the special provisions applicable to children. Based on the findings that justice actors are looking to deal with cases quickly to move onto more profitable cases or to satisfy targets with a promotion in eye, it follows that they would seek to avoid the time and resource consuming special rights and protections that apply to children in conflict with the law. The police were consistently named as the main culprits. Judges and law officers were also criticised for not questioning breaches or enforcing children's rights. Although not specifically addressed during interviews, it is perhaps the case that the special protections are not respected as a result of corruption i.e. abusing entrusted power for private gain.

⁹¹ Leo, R. A., Costanzo, M., & Shaked-Schroer, N. (2009) Psychological and cultural aspects of interrogations and false confessions: Using research to inform legal decision-making.

As is set out above, the majority of respondents were lawyers who had some form of interest in juvenile cases. In discussions with them most of them, they reported wanting to question these behaviours but described feeling hampered by the court being able to threaten sanctioning them by removing their license to practice. As is discussed in Chapter 3, lawyers in Myanmar are not independent. The Supreme Court of the Union of Myanmar controls their licences and therefore the judges they appear before; the police (by virtue of being military affiliated) and law officers all have influence and the capacity to threaten having their licence revoked.⁹² The interesting question that follows, which is not within the scope of this research, is whether that failure to act in itself constitutes corruption or is simply an act of self-preservation in the face of a rigged system?

4.5.4 Justice delayed is justice denied: the issue of routine adjournments

The issue of postponing court hearings is endemic in Myanmar and well documented in other pieces of research⁹³. Case Study 5 at page 46 below involved court proceedings which lasted for one and a half years. Although that particular case involved a number of appeals to higher courts, the lawyers working on that matter estimated that 75% of hearings were adjourned without good reason and usually because the named police officer in the case did not come to court.

That specific case is also supported by the data collected. 59% of participants cited routine adjournments because police and prosecution witnesses do not show up to court. As discussed in the section below, time spent on remand does not count towards any sentence. As a result, any delay to court proceedings means that accused children are deprived of their liberty for longer. Research also suggests that with time, the quality of evidence decreases having the effect of increasing the probability of a miscarriage of justice⁹⁴.

Although it was possible to examine the reasons why adjournments are happening (i.e. police and prosecutions witnesses not coming to court), it was not possible to explore the reasons why those do not come to court. One participant did mention that there are not enough police officers. In 2012, it was estimated that Myanmar had in excess of 100,000 police officers.⁹⁵

⁹² ICJ (2013)

⁹³ Justice Base (2017)

⁹⁴ Ibid

⁹⁵ Selth, A. (2012) Myanmar's Police Forces: Coercion, Continuity and Change. *Contemporary Southeast Asia*, 34(1), pp.53-79.

The impact of adjournments is known. The reasons for adjournments are known anecdotally but need to be evidenced. The reasons police and prosecution witnesses are not coming to Court are not known and need to be explored.

4.6 Enablers

Enabler /ɛˈneɪblə/ - A person or thing that makes something possible.⁹⁶



Figure 9: Word cloud representation of 'enabler' typologies

Based on the data collected and Table 1⁹⁷ above, it is clear that interviewees were much less forthcoming whilst discussing enablers for children in conflict with the law. Following the iterative and inductive process of creating typologies, only five 'enablers' were identified with the highest at a percentile of 41%. This is perhaps a symptom of the enormity and scale of the barriers identified in section 4.4 above. Despite the challenging context, participants were able to identify some strategies and angles that are being used to promote the rights of CICL.

⁹⁶ Dictionary, O. E. (2002) Concise Oxford English Dictionary.

⁹⁷ See page 30 above

4.6.1 Diversion: attitudes and practices that keep children away from the formal system

In line with the first section of interviews considering factors which decide the justice venue, 41% of interviewees referred to diversionary measures being the best strategy for promoting the rights of children in conflict with the law. This can be interpreted as participants essentially saying that the best way to protect children is to avoid them coming into contact with the formal system.

As it stands under Myanmar law, there is no formal framework to divert children away from the formal system. Participants confirmed that the community based system in Yangon and Mandalay, although not recognised in law, is tolerated and acknowledged by authorities. In fact, as literature suggests, it is low level government administration officials that facilitate the negotiations. This is well exemplified in Case Study 4 below.

Case study 4: Theft by a Tea shop waiter

Ko Myo was a waiter who was alleged to have stolen money from his employer in the tea shop where he worked. Ko Myo was 13 years old at the time of the offence. The owner was alleging that he stole 50,000 MMK (\$32) and when he found out beat him quite severely. A member of a local community support group ('CSG') supported by an NGO was at the teashop and seeing the injuries asked Ko Myo what had happened. He disclosed the allegations as well as the physical abuse. The community member went and talked to the tea shop owner. He agreed for the CSG to try help resolve the problem. The CSG contacted the boy's parents who were very poor farmers from the Ayerwaddy division. They also, through the ward administrator spoke to the tea shop owner, Ko Myo and his parents (over the phone).

Ko Myo accepted that he had taken money but that it had been 20,000 MMK (\$13) not the 50,000 MMK alleged by the tea shop owner. The CSG, with NGO funding, supported Ko Myo's parents to come to Yangon. A meeting was held between the tea shop owner, Ko Myo and his parents. Following negotiations, it was agreed that Ko Myo should go back to his parent's home and that they would pay 20,000MMK to the tea shop owner. The issue of the tea shop owner beating Ko Myo was not addressed or dealt with in the negotiations and no complaint was made to the police.

The participant who had knowledge of this case accepted that the actions of the tea shop owner were unlawful and that under Myanmar law he should not have been employing Ko Myo in the first place⁹⁸. This was qualified by confirming that if it had been referred to the police, it is very likely that Ko Myo would have ended up in a training school during the course of the proceedings and found guilty. In essence, the participant was saying that ensuring that the case did not end up in the formal system heavily outweighed not addressing the physical assault and child labour violation.

4.6.2 Legal representation

Lawyers and activists that took part in this research each identified specialist legal representation as one of the main factors to children's rights being promoted in the formal system (29%). The extent to which lawyers are able to promote children's rights is limited by their lack of independence. One lawyer in particular described how the judge in the local court regularly threatened defence lawyers with reporting them to have their licences taken away when they '*ask too many questions*'. Despite this and against all odds, there are examples of lawyers successfully assisting children as in Case Study 5.

Case Study 5: Appeals which resulted in a not guilty verdict

This case involved a 14-year-old girl Ma Phyu. She is from a rural region but was in the city working for a rich family as a housemaid. Ma Phyu was alleged to have stolen about 40,000 MMK. She denied taking any money so her employers took her to the police station and opened a complaint. Ma Phyu was kept in police custody where she alleges that she was physically and emotionally abused by officers. They hit her with a bamboo stick and deprived of sleep for the entirety of the time she was in police detention. In the end she confessed to having stolen the money. Her parents were not notified of her arrest.

The police had difficulties identifying Ma Phyu's age as she didn't have a National Registration or birth certificate. She was brought before a township judge within 24 hours of arrest. She was treated as an adult and the judge did not question the issue of her age. She was then remanded in Insein prison which is an adult prison.

⁹⁸ s. 24 Child Law 1993 states that; "*No one under the age of 14 may be employed.*"

After six hearings, a lawyer with access to funding to represent poor clients heard about the case whilst at court on another matter. After obtaining a power of attorney to represent Ma Phyu, the first success was that the lawyer managed to get the case transferred to the juvenile court. They applied for bail but the court demanded a bond of 10 lakhs (equivalent to \$800) which Ma Phyu's family could not afford.

The court proceedings went on for one and half years. The police officer repeatedly did not attend court and neither did the complainants i.e. Ma Phyu's former employers. Despite the lawyer raising the fact that the only evidence was an inadmissible forced confession, ultimately Ma Phyu was found guilty and sentenced to two years in a training school. The lawyer reported that although there was no substantive evidence, they heard from the community that the complainants paid the Judge on a number of occasions to make favourable decisions.

The lawyer appealed the decision a number of times and was ultimately successful in overturning the guilty verdict. The final judgment did not mention the forced confession and relied on a minor technicality.

4.7 Outcomes and implications for children in conflict with the law

According to 76% of the participants, children are much better off in the community system, which usually involves financial compensation to the aggrieved party and in some cases some form of good deed being performed by the child. By nature of the system and the fact that it operates outside the formal legal framework, it is not possible for the outcome to result in a child being detained.

Only one participant mentioned negative outcomes for children in the community system, notably that some children can be stigmatised by peers and friends following the community process. This is perhaps a reflection of the representation of interviewees but also perhaps because of community incentives to maintain harmony and promote the child's welfare. In all the case studies involving the community system outcomes the children remained or were reunited with their family. *"Sympathy towards children in a community system results in them not being punished in a way that is detrimental to their development, well-being, education and health. I also think that the way in which negotiations and discussions are conducted lead to aggrieved parties being much more sympathetic towards the children."*

All seven case studies involving the formal system resulted in the child being being

found guilty and detained at a training school. This is supported by 58% of participants who reported that formal system nearly always results in a guilty verdict and detention in a training school. Participants confirmed that the court process never results in restorative measures i.e. non-custodial orders aimed at rehabilitating the child.

Through discussions about outcomes for children in the formal system, discussions inevitably lead to training schools. These are government-run institutions⁹⁹ where a varied group of marginalised children are placed and which includes: children in conflict with the law (both on remand and serving sentences), orphans, street children and children in need of protection. There are twenty-seven such institutions across Myanmar with three accepting children who have been found guilty of a crime and three others detaining children on remand. Of the interviewees that had been to or worked with children in these institutions, all expressed concern at the conditions in which children are kept. Overall, 65% of participants described training schools as under resourced, violent, abusive and unhealthy.

There is a distinct lack of access to basic needs and services such as food, water, sanitation, health and education. For example, one interviewee confirmed that the daily budget per child is 1,000 MMK i.e. the equivalent to 0.65 USD to cover all costs. Children are routinely kept locked up despite national legislation expressly prohibiting the practice. Principals are fined and demoted if children run away, incentivising them to keep them locked up.

In the community system, there is no possibility of depriving a child of his or her liberty and, as is discussed above, this usually results in the child's family paying some form of financial settlement. This contrasts starkly with the outcomes in the formal system which usually result in the child being deprived of his or her liberty in a training school.

4.8 Recommendations of interviewees

95% of the interviewees confirmed that if they were a child and accused of a crime, they would prefer to be dealt with in a community-based system. There was also a lot of positivity towards the community system which despite its flaws is seen as a much better alternative for children accused of a crime. It was clear during interviews that there was a sense of disillusionment and low expectations in terms of reform of the formal legal system with a view to making the system more child-centred and

⁹⁹ The Child Law 1993 Chapter XIII mandates the Department of Social Welfare to manage and oversee training schools.

focussed. Despite this, participants were very keen to discuss strategies and activities that could improve justice for children, which included:

1. Community based dispute resolution to become mandatory for the majority of offences;
2. Nearly all the participants raised the need to tackle corruption in the formal legal system but were not able to identify strategies to address the issue;
3. Activities which promote the independence of lawyers and judges;
4. Children to have access to lawyers with specialist training and funding to work on juvenile cases;
5. Minimise police involvement until a time when systemic and behavioural changes are made;
6. Implementation of monitoring and reporting of the formal system and justice actors by CSOs and State actors.

Chapter 5: Conclusion and Recommendations

5.1 Conclusion

The United Nations Convention on the Rights of the Child has been endorsed by the Government of the Union of Myanmar and, as set out in Chapter 3, provides for a number of principles applicable to children in conflict with the law, including but not limited to:

- the child's best interest being a primary consideration;
- non-discrimination and equality before the law;
- to be treated with dignity and compassion;
- to be heard, to freedom from torture or violence, and;
- to be incarcerated as measure of last resort.

In the case of children in conflict with the law, the Government of Myanmar's duty to respect, protect and fulfil those rights is dependent on the ground level on the actions and behaviour of the police, law officers under the scrutiny of the judiciary and defence lawyers. Although the scale of this research is small, it does provide a previously un-researched snapshot of the implementation of the level to which those duties and obligations are fulfilled. The picture is bleak and the systemic and behavioural causes behind it are entrenched and difficult by their nature to tackle.

5.1.1 If at all possible, avoid the formal legal system

This research supports previous studies specific to Myanmar which considered the factors that determine which venue individuals and communities prefer for the administration of justice. The resounding finding is that if at all possible communities in Yangon and Mandalay will seek to avoid the formal court system and not report at all or use community-based mechanisms to deal with allegedly delinquent children. The underlying reasons for this are explained by how dysfunctional, unfair and corrupt the formal legal system is. Daw Aung San Suu Kyi knew this coming into office; *"Ninety-nine out of a hundred people have no faith in the courts. They no longer rely on courts at all. Our observation is that they only rely on money. That shows just how broken our judicial branch has become."*¹⁰⁰

5.1.2 The case of marginalised and disadvantaged children

¹⁰⁰ Daw Aung San Suu Kyi in People's Age 28th March 2013 p 21 as referenced by Cheesman (2015); p.162

The opportunity to avoid the formal legal system is not available to all children. This study highlights that children from marginalised or disadvantaged communities such as repeat offenders, street children, orphans or those from very poor families do not get the opportunity to engage in the community based system. They are reported directly to the police and are then processed by the formal system.

5.1.3 Corruption and violence as the root of systemic and behavioural barriers for children in conflict with the law

With 65% of participants confirming that corruption is the main barrier in the formal system and the prevalence of violence as a tool for forced confessions, this research supports previous research about the formal justice system in Myanmar¹⁰¹. It is biased, corrupt and riddled with violence¹⁰². As one participant put it; “*there is no justice in Myanmar today.*”

To use Punch’s analogy; is it the apple, barrel or orchard that is rotten?¹⁰³ Based on the narrative case studies of children in conflict with the formal legal system, “*it is not the apple or the barrel that is rotten but the system...*”¹⁰⁴.

Of course not all children are innocent of the crimes they are accused of; in some respects, that is beside the point. Children in conflict with the law should be guaranteed the rights and protections afforded to them in law and served with a fair trial resulting in an outcome commensurate with the offence and which avoids depriving them of their liberty if at all possible. Instead, police officers routinely use violence, torture and degrading treatment to force confessions out of children either because there is no ‘moneymaking’¹⁰⁵ opportunity or because the proceedings are a hindrance. The judges, law officers and sometimes defence lawyers go along with this either actively engaging in breaching children’s rights for personal gain or passively standing by through fear and as a result of distorted power dynamics.

The challenge of surmounting the extent of violence, corruption and impunity and its deeply engrained systemic and behavioural practices seems an unsurmountable task. The entire system of criminal justice is flawed; how can the the apples or barrel be healthy if the entire orchard is rotten?

¹⁰¹ Cheesman (2015)

¹⁰² Ibid

¹⁰³ Punch, Maurice & Stan Gilmour. (2010). Police Corruption: Apples, Barrels and Orchards. Criminal Justice Matters, 79:10-12; p.172

¹⁰⁴ Ibid; p.172

¹⁰⁵ Cheesman (2013)

The challenge is apparent in the lack of enablers identified by participants as identified in section 4.6. There needs to be systematic change in order to change corrupt behaviour.¹⁰⁶ There has been a public rhetoric, termed the ‘public transcript’ by Cheesman, for tackling corruption in Myanmar courts since colonial times.¹⁰⁷ Despite this, the moneymaking and violent practices live on and continue on a daily basis in Myanmar police stations and courts. It is not until these issues are addressed that rights and freedoms for children in conflict with the law can be protected, respected and fulfilled. In the meantime, children in conflict with the law in Yangon and Mandalay are perhaps best served in the community-based systems.

5.2 Recommendations

First, it does not fall within the scope of this paper to make policy recommendations or to determine specific activities that could overcome the enormity of the challenges identified within the body of this report over and above those identified by interviewees. Second, making recommendations in light of the expertise and contextual knowledge of the participants to this research without having the opportunity to discuss it with them seems flawed. Third, and perhaps more fundamentally, this research is about children and unfortunately, it was not possible to give them a voice or the opportunity to participate in its design and implementation.

Despite that, it does seem appropriate to highlight the areas and themes that deserve more in depth research and study, which could improve the experiences and outcomes for children in conflict with the law. The main recommendations can be summarised as follows:

1. Corruption, impunity and the use of violence are at the heart of the majority of systemic and behavioural barriers to a child friendly formal justice system. In particular, this research raises the need for there to be a more in depth understanding of the links between corruption in the criminal justice system and violence being used as a tool for forced confessions.
2. There is an urgent need for a more detailed understanding of how marginalised children from urban and peri-urban areas accused of minor

¹⁰⁶ Punch et al (2010). See also: Jensen et al (2017)

¹⁰⁷ Cheesman (2015); p.163; See for example: Kyaw Min, A. (2018) Court staff involved in corruption: committee. Myanmar Times. 29 January 2018. Accessed 16.08.18: <https://www.mmmtimes.com/news/court-staff-involved-corruption-committee.html>

offences can be diverted away from court proceedings and incorporated into existing community based dispute resolution systems.

3. The effects on children of being detained in training schools was highlighted as particularly problematic. If at all possible, research such as the study completed in Mandalay by Second Tap Root, exploring the experiences and views of children in training schools should be undertaken in Yangon and other areas.
4. This research was only able to '*scratch the surface*' of community-based dispute resolution systems and was not able to consider customary systems. A more in depth examination of the realisation of the rights of children in conflict with the law in community and customary systems is needed.

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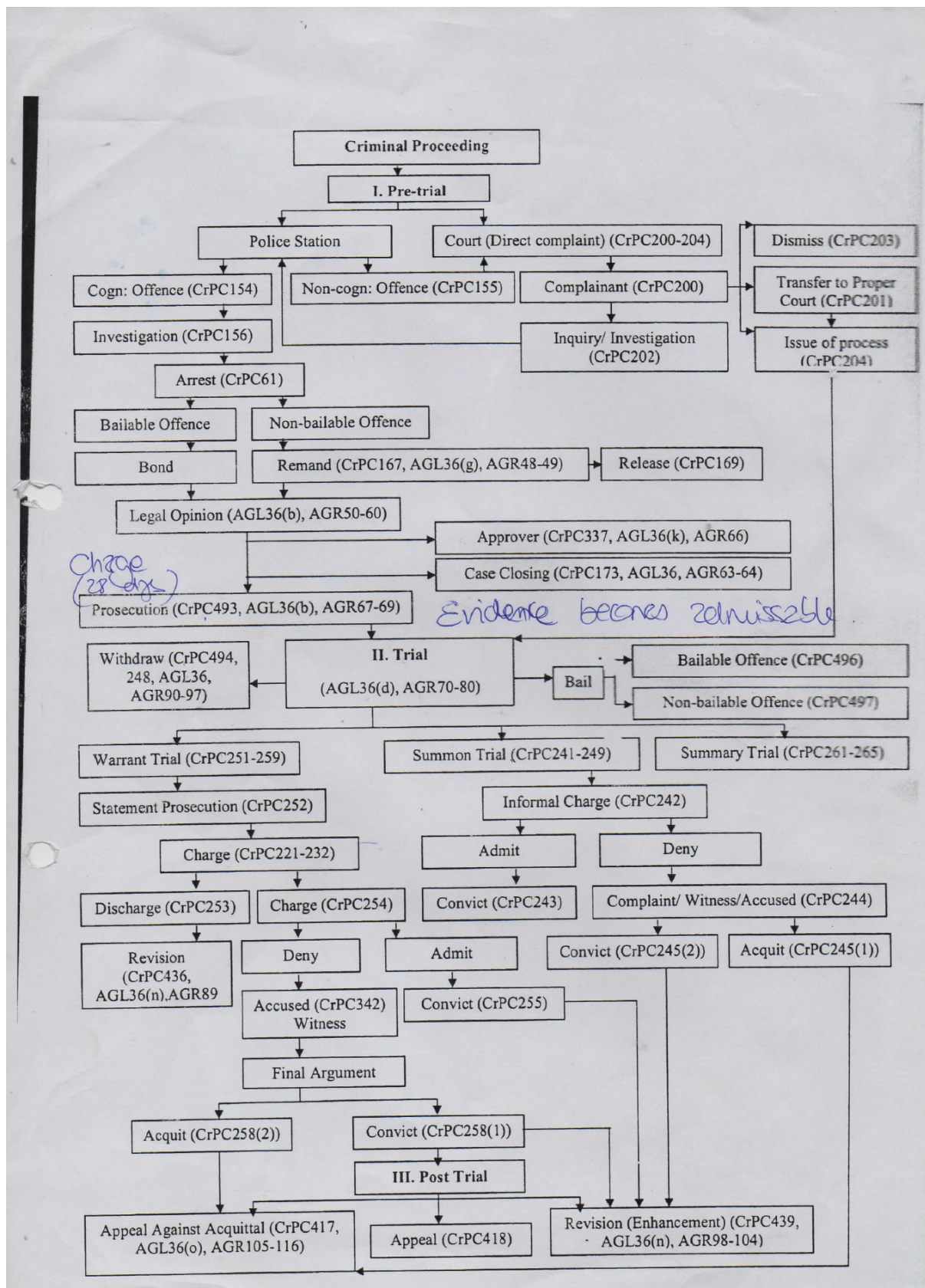
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Annexe 1: Criminal Procedure Flowchart



Note: Source unknown

Annexe 2: Coding Scheme

Code	Interview themes & typologies identified
	Factors deciding community versus formal system...
1	The formal system is unsympathetic and punitive towards children
2	Less serious cases end up in the community system
3	More serious cases end up in the formal system
4	Focus in CS on negotiation, harmony and maintaining family life/education
5	Communities don't trust justice actors because of corruption and impunity
6	Children from poor and disadvantaged groups end up in the formal system
7	No corruption money to be made out of juvenile cases
8	Police don't like dealing with juvenile cases - too many procedures
	Barriers...
9	Rights and protections in national legislation are not respected
10	Children from poor backgrounds are more likely to be discriminated
11	Corruption is main barrier for children accessing justice in the formal system
12	Routine adjournments as police do not attend court
13	Transportation to & from court is lengthy and driver for forced confessions
14	There is no culture of assuming that the child is innocent until proven guilty
15	Lack of opportunity for bribes is the main driver of forced confessions
16	Children are routinely not given bail
17	Lack of independent lawyers willing to take on cases involving children
18	Police fail to make adequate enquiries to determine the child's age
	Enablers....
19	Activities promoting diversion i.e. keeping children out of the formal system
20	Legal representation from lawyers who are focused on child rights and tackling corruption in the courts
21	Funding and resources from donors
22	Children being made aware of their rights
23	Support from CSOs that provide resources
	Outcomes...
24	Community system is much better for children in terms of outcomes
25	Attitude of impunity & lack of resources result in forced confessions
26	Training schools are under resourced, abuse, violent and unhealthy
27	Most children in formal system are found guilty and detained in training schools
28	Corruption results in unsympathetic and punitive outcomes for children
29	Community system can end up with the child being discriminated
	Recommendations...
30	There needs to be complete reform of how the police deal with juvenile cases
31	More CSOs focusing on monitoring and creating a culture of accountability
32	Activities that tackle corruption in the formal system needs to be promoted
33	More lawyers working on juvenile cases and legal aid funding for them to do it
34	Make community dispute resolution mandatory for the majority of offences
35	Time spent on remand should count towards sentence

Annexe 3: Interviewee Information Sheet



Information sheet: Participation in research

Project Title: A justice chain analysis of children in conflict with the law in Myanmar

Name, position and contact address of Researcher:

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Study title

Unlocking the justice chains for children in conflict with the law in Myanmar

Introduction

You are being invited to take part in a research study. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully.

What is the purpose of the study?

This research seeks to do a number of things. First of all, it will attempt to understand the barriers and difficulties that children in conflict with the law ('CIC') face when they are defendants in criminal prosecutions against them. Secondly, the research will look at the strategies and activities different organisations and individuals that offer support to children in conflict with the law. Ultimately, the purpose of this study is to make recommendations to improve justice processes and outcomes for children.

Why have I been invited to participate?

Understanding the experiences of children in conflict with the law of the justice system is at the heart of this research. As a result, you have been identified as someone who might be able to give valuable information about that.

Do I have to take part?

It is entirely up to you to decide whether or not to take part. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a consent form. You are free to withdraw at any time and without giving a reason.

What will be involved if I take part?

The research will be carried out through an interview. There will be a series of questions, which you will be asked to answer. The interview will last about one and a half (1.5) hours. There will be an interpreter present during the interview who will be able to translate Burmese into English and vice-versa. You can choose your preferred language.

If you feel it would help, you are encouraged to invite someone (support worker, friend) who can sit with you whilst you take part in the interview. The role of the supporter will not be to answer any questions.

I am a male researcher and the interpreter/translator who will be assisting with this research is female. If you would feel more comfortable speaking to a female researcher, it can be arranged at short notice. Please do not hesitate to make such a request.

I may ask for your permission to audio record our interview to allow me to listen back and make sure I have accurate notes. If you do not agree, please say so and I will not. If you do agree, I will store the audio file in a secure location and delete it once the research is completed.

What are the possible benefits of taking part?

It is hoped that this research will improve the experiences of children in conflict with the law when they are prosecuted in criminal proceedings. The research will also provide valuable information to organisations that support children in conflict with the law to improve the support they can offer.

Will what I say in this study be kept confidential?

The information that you share about your views and experiences (or those of the organisation that you represent) will be anonymised and kept entirely confidential. The information will however be used to compile a dissertation and a subsequent report that may be disseminated online in English and Burmese. Those documents may well refer to things that you have said as quotes but I will ensure that any information or quotations referred to do not allow you to be identified in any way.

Information stored (i.e. interview notes or audio recordings) that contains any personal information that could identify you and will be kept and ultimately destroyed in a safe and confidential manner.

What will happen to the results of the research study?

The results of this research will appear in the dissertation that I am writing as part of a masters in in Development and Emergency Practice at Oxford Brookes University. Once the dissertation has been completed, I can provide you with an electronic copy. You may prefer to receive a copy of the summary report which will be translated into Burmese

Who is organising and funding the research?

This research is being conducted through Oxford Brookes University and I am a student on the Masters programme in Development and Emergency Practice at the Centre for Development & Emergency Practice.

Further Information:

The supervisor of this dissertation, Richard Carver, can be contacted if you have any concerns relating to this research;

Name: Richard Carver, Senior Lecturer in Human Rights and Governance,

Address: Centre for Development and Emergency Practice, Oxford Brookes University, Oxford, OX3 0BP.

Email: rcarver@brookes.ac.uk

Telephone: 01865 482 839.

If you have any concerns about the ethics of this study, you should contact the Chair of the University Research Ethics Committee at ethics@brookes.ac.uk.

Thank you for taking the time to read this information sheet and for considering taking part in this research.

John Doughty

June 2018

Annexe 4: Ethics form



Faculty Ethics form E3

Faculty of Technology, Design and Environment

Decision on application for research ethics approval

The Faculty Research Ethics Officer has considered the application for research ethics approval for the following research:

Project title:	Justice chain analysis of children in conflict with the law in Myanmar
Name & Department of Principal Investigator:	John Doughty (School of Architecture)
Name of supervisor (if student):	Dr. Richard Carver (CENDEP)

Please check the appropriate box:

1. The Faculty Research Ethics Officer gives ethics approval for the research project. **Please note that research protocol laid down in the application and hereby approved must not be changed without the approval of the Faculty Research Ethics Officer.**
2. The Faculty Research Ethics Officer gives ethical approval for the research project subject to the following:
3. The Faculty Research Ethics Officer cannot give ethics approval for the research project. The reasons for this and the action required are as follows:
4. The research will also require approval from:
 Another external Research Ethics Committee

Signed:

Date: 5th July 2018