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[...](2018) **XXX** draft

COMMISSION IMPLEMENTING DECISION

of XXX

**on the financing of the Annual Action Programme in favour of Myanmar/Burma for
2019 part 1**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012¹, and in particular Article 110 thereof,

Having regard to Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action², and in particular Article 2(1) thereof,

Whereas:

- (1) In order to ensure the implementation of Annual Action Programme in favour of Myanmar/Burma for 2019 part 1, it is necessary to adopt an annual financing decision, which constitutes the annual work programme, for 2019. Article 110 of Regulation (EU, Euratom) 2018/1046 establishes detailed rules on financing decisions.
- (2) The envisaged assistance is to comply with the conditions and procedures set out by the restrictive measures adopted pursuant to Article 215 TFEU³.
- (3) The Commission has adopted the Multiannual Indicative Programme for Myanmar/Burma for the period 2014-2020, and amended it by Commission Implementing Decision of 20.07.2018 C(2018) 4741 final, which sets out the following priorities: to support peace and national reconciliation; to assist in building a functioning democracy; to foster sustainable development and trade; and to support the re-integration of Myanmar/Burma into the international community. These priorities are in line with the areas of engagement of the EU strategy with Myanmar/Burma as adopted by the Foreign Affairs Council on 20 June 2016.
- (4) The objective pursued by the Annual Action Programme in favour of Myanmar/Burma for 2019 part 1 to be financed under the Development Cooperation Instrument⁴ is to

¹ OJ L 193, 30.7.2018, p.1.

² OJ L 77, 15.3.2014, p. 95.

³ www.sanctionsmap.eu. Note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy, the OJ prevails.

⁴ Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020, OJ L 77, 15.3.2014, p. 44.

- improve access to justice for women, the poor and people living in vulnerable situations.
- (5) The action entitled "Deepening Access to Justice in Myanmar (MyJustice II)" has the following specific objectives: Legal empowerment of women, poor and vulnerable groups, including those affected by conflict, to use knowledge of legal rights and justice options and claim rights and Community justice services, both formal and informal are more inclusive, transparent, accountable, equitable and the system will protect and promote fundamental rights.
 - (6) Pursuant to Article 4(7) of Regulation (EU) No 236/2014 indirect management is to be used for the implementation of the programme.
 - (7) The Commission is to ensure a level of protection of the financial interests of the Union with regards to entities and persons entrusted with the implementation of Union funds by indirect management as provided for in Article 154(3) of Regulation (EU, Euratom) 2018/1046.

To this end, such entities and persons are to be subject to an assessment of their systems and procedures in accordance with Article 154(4) of Regulation (EU, Euratom) 2018/1046⁵ and, if necessary, to appropriate supervisory measures in accordance with Article 154(5) of Regulation (EU, Euratom) 2018/1046 before a contribution agreement can be signed.
 - (8) It is necessary to allow for the payment of interest due for late payment on the basis of Article 116(5) of Regulation (EU, Euratom) 2018/1046.
 - (9) In order to allow for flexibility in the implementation of the programme, it is appropriate to allow changes which should not be considered substantial for the purposes of Article 110(5) of Regulation (EU, Euratom) 2018/1046.
 - (10) The action provided for in this Decision is in accordance with the opinion of the Development Cooperation Instrument Committee established under Article 19 of Regulation (EU) No 233/2014.

HAS DECIDED AS FOLLOWS:

Article 1

The programme

The annual financing decision, constituting the annual programme for the implementation of the Annual Action Programme in favour of Myanmar/Burma for 2019 part 1, as set out in the Annex, is adopted.

The programme shall include the following action:

- a) "Deepening Access to Justice in Myanmar (My Justice II)" set out in the Annex;

Article 2

Union contribution

⁵ Except for the cases of Article 154(6) of Regulation (EU, Euratom) 2018/1046, where the Commission may decide, not to require an ex-ante assessment

The maximum Union contribution for the implementation of the programme for year 2019 is set at EUR 20 000 000, and shall be financed from the appropriations entered in the following line of the general budget of the Union: 21.020200.

The appropriations provided for in the first paragraph may also cover interest due for late payment.

Article 3

Methods of implementation and entrusted entities or persons

The implementation of the actions carried out by way of indirect management, as set out in the Annex I, may be entrusted to the entities or persons referred to or selected in accordance with the criteria laid down in point 5.4 of the Annex I.

Article 4

Flexibility clause

Increases or decreases of up to EUR 10 000 000 not exceeding 20 % of the contribution set in the first paragraph of Article 2, or cumulated changes⁶ to the allocations of specific actions not exceeding 20 % of that contribution, as well as extensions of the implementation period shall not be considered substantial for the purpose of Article 110(5) of Regulation (EU, Euratom) 2018/1046, provided that these changes do not significantly affect the nature and objectives of the actions.

The authorising officer responsible may apply the changes referred to in the first paragraph. Those changes shall be applied in accordance with the principles of sound financial management and proportionality.

Done at Brussels,

For the Commission
Neven MIMICA
Member of the Commission

⁶ These changes can come from assigned revenue made available after the adoption of the financing decision.



EN

This action is funded by the European Union

ANNEX

of the Commission Implementing Decision on the financing of the Annual Action Programme in favour of Myanmar/Burma for 2019 part 1

Action Document for Deepening Access to Justice in Myanmar (MyJustice II)

ANNUAL PROGRAMME

This document constitutes the annual work programme in the sense of Article 110(2) of the Financial Regulation and action programme/measure in the sense of Articles 2 and 3 of Regulation N° 236/2014.

1. Title/basic act/ CRIS number	Deepening Access to Justice in Myanmar (MyJustice II) ACA/2019/041-444 financed under the Development Cooperation Instrument			
2. Zone benefiting from the action/location	Myanmar/Burma The action shall be carried out at the following location: Nationwide			
3. Programming document	Addendum No 1 to the Multiannual Indicative Programme (2014-2020) for Myanmar/Burma ¹			
4. SDGs	Main: SDG 16 – Peace, Justice and Strong Institutions Secondary: SDG 5 – Gender Equality.			
5. Sector of intervention/ thematic area	Governance / Rule of law / State capacity building Peacebuilding support	DEV. Aid: YES		
6 Amounts concerned	Total estimated cost: EUR 20 000 000 Total amount of EU budget contribution: EUR 20 000 000			
7. Aid modality(ies) and implementation modality(ies)	Project Modality Indirect management with the British Council			
8 a) DAC code(s)	15130 - Legal and Judicial Development 15160 - Human Rights 15210 - Security System management and reform 15230 - Civilian peace-building, conflict-prevention and resolution			
b) Main Delivery Channel	13000 - Third Country Government (Delegated co-operation)			
9. Markers (from CRIS DAC form)	General policy objective	Not targeted	Significant objective	Main objective
	Participation development/good governance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Aid to environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹ C(2018)4741 of 20 July 2018

	Gender equality (including Women In Development)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Trade Development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Reproductive, Maternal, New born and child health	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	RIO Convention markers	Not targeted	Significant objective	Main objective
	Biological diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Combat desertification	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Climate change mitigation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Climate change adaptation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Global Public Goods and Challenges (GPGC) thematic flagships	N/A			

SUMMARY

This Action will follow up and build on key lessons and achievements of the EU-funded MyJustice programme to continue EU engagement focusing on strengthening the rule of law, improving governance and building state and non-state capacities to respond to the rights and needs of local communities. In particular the Action aims to deepen access to justice for women, the poor and groups living in vulnerable situations affected by conflict, to contribute towards sustainable peace and development in Myanmar/Burma. A civilian government in place since 2016 has increasingly created space and platforms to engage a range of stakeholders in support of broader reforms in the justice sector. The modest gains to date will be undermined if weaknesses in the rule of law and justice sector landscape are left unattended, including lack of judicial independence, low levels of trust in the formal justice system, a weak legal profession, deficits in rights awareness and legal empowerment, as well as weak promotion and protection of rights – in particular for women, the poor and groups living in vulnerable situations in conflict-affected communities.

The government has affirmed its commitment to address these challenges in the Myanmar Sustainable Development Plan (MSDP) which identifies Justice and Rule of Law amongst the top priorities under its goal to achieve Peace, National Reconciliation, Security and Good Governance. It also established the Union level Justice Sector Coordination Body to lead the development of a national justice sector strategy. The EU has engaged in the justice sector in Myanmar/Burma for several years and since 2015 channelled some of its support through the ongoing MyJustice² action (ending mid-2019), which encountered strong demand for community level access to justice and legal empowerment services, and a growing interest amongst justice sector institutions/professionals for capacity development and policy engagement, to which this Action will directly respond.

² Decision 2014 / 037-333 - Strengthening Governance in Myanmar, www.myjusticemyanmar.org

1 CONTEXT ANALYSIS

1.1 Context Description

In 2010, Myanmar/Burma emerged from more than 6 decades of military rule since independence in 1948, and embarked on an ambitious range of political, economic and administrative reforms. A civilian government was elected in 2015, yet the democratic transition remains incomplete as the country continues to face a complex set of interrelated governance, security and socio-economic challenges. As the current government approaches the mid-point of its term, the limits of its political, economic and social power have been publicly tested.

Some policy gains are evident, but the justice system remains challenged by a lack of judicial independence and weak rule of law. Progress has slowed in the peace process and conflict has worsened in some areas, while the legacy of past violations remains largely unacknowledged in formal peace talks with ethnic armed organisations (EAOs). The humanitarian and security crisis in Rakhine state, characterised by allegations of serious human rights violations and mass displacement, has led to renewed international condemnation. Rampant hate speech enabled by rapidly penetrating social media has entrenched communal divisions, increased tendencies of racially based nationalism, ethnic discrimination and support for the military against a perceived existential threat to Buddhist culture by an Islamic insurgency.

Indeed, in light of the decision by the ICC pre-trial chamber confirming the prosecutor is able to proceed with a preliminary examination of the situation regarding possible deportation of the Rohingya as a crime against humanity, and the establishment of an international investigative mechanism by the Human Rights Council, the issue of criminal accountability is now firmly on the international agenda. However, international good practice on Transitional Justice does not require criminal prosecutions to be the first or indeed the most dominant response. While impunity (in the form of amnesties, etc.) are not permissible for the most serious international crimes, the international legal framework offers considerable scope for customised national solutions that determine the sequencing and form of appropriate criminal accountability. The state of Myanmar's criminal justice system and legal framework means it is highly unlikely that credible national investigations or prosecutions can be held. International Covenant on Civil and Political Rights (ICCPR) ratification remains an important goal for EU supported interventions to promote, but in and of itself is not the cause of the justice system's dysfunctionality. **The key rights components of the ICCPR are already covered in the training currently provided** to MyJustice partners. A clear focus on gender, ethnic and religious equality and social inclusion is already a focus of training for lawyers and other MyJustice beneficiaries, and public information on the court system in minority languages already commenced. This could be developed further in the proposed Action looking at the specifics of hate speech, building on work with lawyers around defamation that is taking place in MyJustice.

The EU-funded MyJustice programme has made significant foundational contributions to improving access to justice. It has built strong relations with a newly established Justice Sector Coordination Body, the General Administrative Department, the legal profession and other influential agents across government and civil society, and continues to provide justice services to thousands of people in six regions and states (Mandalay, Bago and Yangon Region and Shan, Kayin and Mon States). This follow-up Action will build and expand upon these foundations to directly tackle barriers hindering access to justice, enhance justice sector

institutional capacities and promote legal empowerment of rights-holders, the poor in vulnerable situations and women in particular..

1.2 Policy Framework (Global, EU)

The Council conclusions on the EU strategy with Myanmar/Burma, adopted in June 2016³, set out the framework for EU's support to the ongoing reforms in Myanmar/Burma. In the Council conclusions on Myanmar/Burma of February 2018⁴, the EU and Member States reconfirmed their strong commitment to support the country's democratic transition, peace, national reconciliation and inclusive socio-economic development. The Action is in line with the EU policy priorities PEACE (peaceful and inclusive societies, democracy, effective and accountable institutions, rule of law and human rights for all) and PEOPLE (legal education) as well as with SDG 16 (Promote just, peaceful and inclusive societies). The action takes forward the Commission's reference document on Support to Justice and the Rule of Law⁵, which confirms that rule of law, access to justice and legal empowerment of people are vital foundations for ensuring good governance, human rights, citizen security and inclusive socio-economic development. The Council conclusions on EU support to transitional justice to '*ensure that transitional justice forms a vital component in the processes of any peace negotiations which the EU supports*' will also guide the action.⁶ Other EU frameworks relevant to this action are the 2017 European Consensus on Development⁷, the [EU Strategic Approach to Women, Peace and Security \(WPS\)](#)⁸, and the Gender Action Plan (GAP) 2016-20⁹, Objectif 17 "Equal rights and ability for women to participate in policy and governance processes at all levels."

1.3 Public Policy Analysis of the partner country/region

The Office of the President has significant power under the **2008 Constitution** to control, develop and drive all areas of government, except for those areas that are controlled by the military. This includes the Union Attorney General's Office (UAGO) and financial responsibility the judiciary/courts. Although the 2008 Constitution mentions a separation of powers between Executive and Judiciary (Article 11a), this is undermined by a number of other clauses which enshrine the pre-eminence of the Executive over the Judiciary such as the power of the President to appoint the Chief Justice of the Supreme Court (the appointment is also subject to ratification by the Parliament, but this is largely a procedural matter). Another significant feature is that there is no Ministry of Justice rather the Attorney General which is deeply embedded within the Executive¹⁰.

In 2010, the **Union Judiciary Law** was enacted to adopt the present Judicial System under the 2008 Constitution which creates the following Courts: Supreme Court of the Union (SCU), Courts martial and Constitutional Tribunal of the Union. The SCU is the highest organ of the State Judiciary of the Union of Myanmar and it consists of team a minimum of 7 to a maximum of 11 judges, including the chief justice. The SCU supervises all Courts in the

³ <http://data.consilium.europa.eu/doc/document/ST-10482-2016-INIT/en/pdf>

⁴ <http://www.consilium.europa.eu/media/32958/st06418-en18.pdf>

⁵ <https://europa.eu/capacity4dev/t-and-m-series/minisite/list-available-publications>

⁶ <http://data.consilium.europa.eu/doc/document/ST-13576-2015-INIT/en/pdf>

⁷ https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-development-final-20170626_en.pdf

⁸ Annexed to the Council Conclusions on Women, peace and security adopted 10 December 2018, (15086/18).
<https://www.consilium.europa.eu/media/37412/st15086-en18.pdf>

⁹ http://www.consilium.europa.eu/en/meetings/fac/2015/10/st13201-en15_pdf/

Union; and may direct to adjudicate the important cases of the High Court of the Region or State, Courts of Self- Administered Division, Self - Administered Zone and District Courts by a bench consisting of more than one judge.

Justice sector priorities are still nascent and ill-defined, and the recently adopted Myanmar Sustainable Development Plan (MSDP) puts Justice and Rule of Law amongst the top priorities under its goal to achieve Peace, National Reconciliation, Security and Good Governance. Youth, gender empowerment, equity and inclusion are claimed to be mainstreamed into all aspects of MSDP implementation. Strategies have been developed to this end for all pillars, including to integrate gender responsive budgeting at all levels. A national justice sector coordination conference in March 2018 laid the basis for a **national justice sector strategy** to enable clearer alignment of development assistance, which is being developed at the time of writing and it is reflected in the MSDP. Preliminary outcomes include: government commitment to building public trust and accountability of justice institutions; need for evidence of what works and what not; as well as the importance of informal justice systems.

The NLD government is keen to demonstrate the benefits of the rule of law to Myanmar's population, and to ensure that a transformation of laws and legal institutions is responsive to public attitudes. This builds upon existing policy on rule of law such as the **2015-19 Strategic Plan of the Union Attorney General's Office (UAGO)**¹¹, Goal 3: "*to inspire public trust and confidence in the justice system*". At the same time, however, the government has continued to allow the application of laws which are criticised by civil society and media as violating human rights, particularly around freedom of expression.

Limitations in the justice sector's capacity to respond equitably, coherently and effectively is particularly evident in ethnic states affected by conflict. Whilst the Nationwide Ceasefire Agreement (NCA) and Panglong-21st century conferences create an apparatus unseen in Myanmar/Burma's recent history, they do not address on-the-ground drivers of conflict and injustice. There is a lack of attention to customary law and practices on which justice systems are based in EAO-controlled areas. If progress towards a federal Myanmar/Burma is to be meaningful, inclusive and just, then analysis of how ethnic justice systems currently operate and might continue to develop in a federal Union will be a crucial component of peace efforts. This ambition links with the goal "*to promote the rule of law and to foster regional peace and tranquillity*" outlined in the mission of the **Judiciary Strategic Plan (2018-2022)**¹², supported by the Supreme Court's own budget although details are not public. The Action is aligned to the judiciary's main five strategic areas: i) Facilitate and Expand Public Access to Court Services (including support to Union Legal Aid Board to manage and direct an effective nationwide Legal Aid system, ii) Promote Public Awareness (including enhance community-based programme for court information, iii) Enhance Judicial Independence (including an assessment on current status of judicial independence) and Administrative Capacity, iv) Promote and Ensure the Professionalism and Accountability and Integrity of the Judiciary (including enhancement the quality of judicial education) and v) promote efficient case management and court specialisation. Greater capacity to manage disputes locally can better secure the kind of equitable and conflict-sensitive socioeconomic development the

¹¹ http://www.oag.gov.mm/?page_id=8

¹² <http://www.unionsupremecourt.gov.mm/sites/default/files/supreme/stplan2018eng.pdf>

document aims to support, and achieve the kind of “strong foundation for the Federal Union” announced by the State Counsellor in October 2017¹³.

1.4 Stakeholder analysis

Public perceptions regard lawyers as ‘brokers’ and police and judges as expensive and favouring the elite at the expense of the poor. The steady deterioration in quality of legal education has meant that much of the **legal profession and justice sector actors** are ill-equipped to make strategic interventions that challenge repressive or discriminatory laws or practices, or to engage with the poor and other marginalised groups to better ensure that the law can work to realise their interests, reinforcing popular perceptions that justice sector institutions cannot provide access to justice. In Myanmar, free legal representation is only available to those who are accused of a capital offence. The lack of legal representation and advice, issues of corruption, and a lack of awareness of the law and basic procedures, all serve to constrain economic activity and livelihoods. Research by the MyJustice programme confirms perceptions of the role of law as a **means to control rather than to protect rights** or constrain government power. Hence, **people prefer the lowest level of informal mechanisms** in their community to solve disputes, commonly the Ward and Village Tract Administrators.

There is, however, strong demand from a **new generation of lawyers** to rectify this and play a more active role in creating bodies and disseminating practices that as in, SDG 16 “*promote the rule of law at the national and international levels and ensure equal access to justice for all*”. Although statistics on the percentage of women lawyers are not published, a new project with the Supreme Court to digitise their directory of registered lawyers will provide this information. In 2015 the central statistics office in 2016 reported the lower courts’ judiciary to be 53% women. Overall women are well represented in the legal profession and well above many other parts of government. While there are no women Supreme Court justices, one of the Directors General is a woman, and at the high court level in the 14 regions and states there are 37% women judges, but none is Chief Justice¹⁴.

The **Union Coordinating Body for Rule of Law Centres and Justice Sector Affairs** ("**Justice Sector Coordination Body**", JSCB), a formal Government-led coordination mechanism, was established in February 2017 to strengthen the justice system by ensuring effective coordination across Myanmar government agencies, international organizations, and civil society groups on rule of law and justice activities. Chaired by the Attorney-General, it has met 5 times, and is comprised of MPs, the SCU Director General, senior officials at various ministries whose jurisdiction includes aspects of the justice sector or law enforcement, and members of civil society and the private bar. The ongoing EU programme MyJustice was appointed as one of the three advisors to this body, and has played a key role in its actions to date and will continue to support its work in preparing a sector strategy and related work of a new sector-wide coordination mechanism. UNDP provides substantive technical and administrative support to the Coordinating Body. The JSCB has prepared a draft strategic plan

¹³ During the inception phase, deeper analysis can be conducted on the basis of the OHCHR Special Observations and Recommendation of the CEDAW committee (2016), in which the gender issues in the Myanmar legislation and the violations of women’s and girls’ rights are discussed. https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MMR/CO/4-5&Lang=En

¹⁴ See Annual Report of the Myanmar Judiciary (2017): http://www.unionsupremecourt.gov.mm/sites/default/files/supreme/2017_annual_report_english_3.pdf

that includes an action of developing a **national justice sector strategy** which is expected to ensure sustainability of the results through further integration into national and local policy development. The JSCB has also created regional and state sub-coordinating bodies that are mandated to develop local justice sector strategies as well. The ongoing EU support through MyJustice programme has supported several of these sub-bodies to conduct public consultations and start planning work.

The **Union Legal Aid Board (ULAB)** was established in November 2017 as the newest justice sector institution, with the Chair and other key roles on the board awarded to senior NLD members. Ongoing lack of clarity on its budget and staffing, combined with inexperience in government administration, resulted in slow progress to date. However, ongoing EU support ensure that lessons learnt from the Justice Centres duly inform the design of new **state-funded legal aid system**, and to sensitise the ULAB to the benefits of formalised cooperation with Justice Centres in the delivery of legal aid throughout the country. It remains a priority engagement for EU's intervention going forward.

General Administration Department (GAD): The GAD is under the Ministry of Home Affairs¹⁵, and provides an **administrative and security function at State/Region, District, Township, Ward and Village Tract**. The mandate of the department is: "The Rule of Law, Community Peace and Tranquillity, Local Development and Serve the Public Interest." The hierarchical, top-down structure of the GAD was developed under authoritarian rule and had not been changed by the 2008 Constitution. However, in 2012 President Thein Sein introduced changes which he argued were to promote more "people-centred development". One was the introduction of a range of management committees to replace decision-making by a few GAD officers. The committees are formed at District, Township and Ward/Village Tract levels and consist of representatives of the GAD, sister government agencies and community stakeholders. Under the management committee there is generally a 'security, stability and tranquillity and rule of law working committee' that co-ordinates local security needs. The other change was for the Ward and Village Tract Administrator (WVTA) to be elected by ten Household Heads from among themselves, and is supervised but not appointed by the Township Administrator. The WVTA is not a GAD official or civil servant, they receive a stipend and oversight from GAD though.

The GAD presents both opportunities and barriers to furthering access to justice, but cannot be ignored as a significant stakeholder.

Conflict-affected communities face challenges in navigating between **security and justice systems of EAOs**, alternate authorities and government systems, which may drive ongoing conflict. This leaves many with no recourse and more vulnerable to the weaknesses of both formal and informal justice systems. A MyJustice nation-wide survey¹⁶ revealed surprising levels of commonality on key understandings of justice and the obstacles to accessing justice. However, data remains weak on how local-level justice processes work in practice, whether administered by state or non-state actors.

¹⁵ [On 21 December, the Spokesperson of the President Office announced that political responsibility for the General Administration Department \(GAD\) will be moved from the Minister of Home Affairs to the Union Government Office.](#)

¹⁶ <http://myjusticemyanmar.org/publications/research-reports> and http://myjusticemyanmar.org/sites/default/files/Policy%20Brief%20Final_English_0.pdf

Civil society continues to grow yet lacks capacity in legal empowerment approaches, constructive justice policy engagement, and linkages between peace and justice concerns. MyJustice civil society partners emphasize the need for ongoing EU support and positively reported on the participatory approach taken to date.

Among relevant **government** stakeholders, there is growing recognition of the high levels of public mistrust, the prevalence of plural justice mechanisms, and the value of evidence, but few concrete official solutions and limited willingness to change entrenched practices. Successful demonstrations of alternatives are needed to generate the will to overcome these obstacles. Strong endorsement for the Action's approach is evident from the Attorney-General of the Union, the Chief Justice of the Supreme Court, the General Administration Department, the Union Legal Aid Board, senior members of Parliament, the University Board of Legal Studies and the legal profession, who have all contributed to the design of this Action. The MyJustice Mid-Term Review confirmed that "*government stakeholders both support and value the programme's community-led approach*

In a political economy analysis carried out for MyJustice programme, the **potential change drivers identified** includes the Executive, especially the Ministry of State Counsellor, the Union Hluttaws and relevant Parliamentary Committees, State Hluttaws, the UAGO, the Myanmar Human Rights Commission, and the Anti-Corruption Commission. Elements of the media, business community, and civil society leaders are also important. My Justice has already been developing good relationships with representatives of the government, the UAGO and the Judiciary and the Action should build upon these. Hence, the Action will directly target civil society, lawyers, law faculties, Ward and Village Tract Administrators, judges, police, prison officials and law officers as they are all involved in cases brought by Justice Centres or CSO lawyers and they are all involved in the state/regional sub bodies. The Action will also target high-level policy-makers at union/state/regional levels and non-state authorities, including EAOs.

Final beneficiaries are poor and vulnerable communities including those in conflict affected areas who seek justice services, prisoners on remand, law students and the broader public. In particular women; victims of sexual and gender-based violence (GBV) and / or sexual exploitation and abuse (SEA); lesbian, gay, bisexual, transgender and intersex (LGBTI) communities as well as people living with disabilities will benefit as they face additional obstacles in accessing justice due to socio-cultural attitudes and practices¹⁷.

1.5 Problem analysis/priority areas for support

Decades of systematic degradation of Myanmar/Burma's legal rights frameworks, institutions and legal profession have resulted in a justice system inadequate to ensure access to justice, protection of rights or legal empowerment. A report measuring global adherence to the rule of law finds Myanmar/Burma near the bottom of the list, ranked 100th out of 113 nations studied¹⁸. The judiciary lack independence, courts are burdened with low capacity and corruption, while prisoners suffer inhumane conditions and lack access to legal assistance. As explained in section 1.1.2, the Constitution grants the President the power to appoint the Chief Justice, who appoints other judges. Under previous governments there was a high level of intervention by the executive in judicial proceedings, particularly regarding politically

¹⁷ See Justice Base, *Voices from the Intersection: Women's A2J in Plural Legal System in Myanmar*, (2016) www.burmalibrary.org/docs22/Justice_Base-2016-04-22-Women_in%20Myanmar-Plural_legal_systems.pdf

¹⁸ The World Justice Project (WJP) *2017-18 Rule of Law Index*.

sensitive cases. Building a truly independent and impartial justice system will take many years, and the influence of the security apparatus in particular continues to be strong. The law is actively used to control dissent, evidenced by rising criminal defamation prosecutions against journalists and government critics. Positive developments include the adoption of a new code of judicial ethics¹⁹, a revitalized Anti-Corruption Commission, the establishment of a Legal Aid Board, and a Coordination Body for Justice Sector Affairs. However, these recent **improvements are neither entrenched nor irreversible**. The Legal Aid Board and the Coordination Body in particular are both new institutions that evidence a political commitment to tangible change; yet both require dedicated support if they are to ensure effective service delivery and more responsive national policy outcomes, especially for women, the poor and people living in vulnerable situations.

Research by MyJustice confirms perceptions of the **rule of law as a means to control rather than to protect rights** or constrain government power. People prefer the lowest level of informal mechanisms in their community to solve disputes, commonly the Ward and Village Tract Administrators. In addition to prevalent gender-based violence, women tend to lose out under these plural justice processes, for complex social and cultural reasons that highlight the need to tackle the root causes of gender inequality.²⁰ Since many informal institutions are highly discriminatory, the Action should be alert to the need to not inadvertently reinforce discriminatory or harmful practices. Other common issues relate to land, debts, drugs, violence against children, discrimination against vulnerable and marginalised populations such as gender/ethnic/religious minorities, migrants, victims of trafficking in human beings and [people having to resort to harmful survival practices, including prostitution](#)²¹, for whom options for seeking justice are limited. Policy and operational guidance for local level justice actors is lacking. Evidence indicates development solutions focused primarily on formal rule of law institutions fail to address this ongoing reality²².

Moreover, the current pressure on Myanmar Government and Military for international criminal accountability should not preclude interventions that still seek to build **domestic support for complementary processes drawing from the range of transitional justice mechanisms, including non-judicial responses**. Civil society leaders acknowledge that a lasting peace settlement must include some **acknowledgement of past grievances**, and indeed those grievances are a root cause of both blockages in the peace process and public fears of engaging with the formal justice sector even in areas not directly affected by conflict (MyJustice research and other recent research eg by Saferworld confirms this). Elsewhere, acknowledgement of past crimes has resulted from artistic/cultural expressions first, or from history education for instance (both were highlighted in the March 2018 joint report of the Special Rapporteur on TJ and the Special Advisor for the Prevention of Genocide) that then paved the way for future accountability efforts. Given the **lack of popular acknowledgement of recent crimes** (whether in Rakhine, Kachin, Shan or elsewhere), it seems most strategic to

¹⁹ http://www.oag.gov.mm/?page_id=8

²⁰ See Justice Base, *Voices from the Intersection* (2016); UN Women; *Behind the Silence: Violence Against Women and their Resilience in Myanmar* (2014) Gender and Equality Network.

²¹ Prostitution is a gendered phenomenon and both a cause and a consequence of gender inequality which it aggravates further, as elaborated in the European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)). The Commission welcomed the resolution on 28 May 2014 (SP(2014)447).

²² European Commission reference document on Support to Justice and the Rule of Law (<https://europa.eu/capacity4dev/t-and-m-series/minisite/list-available-publications>)

look at longer-term foundational efforts. The Action will be uniquely positioned to explore these **connections between peace and justice**, both in terms of building a better justice system for all which itself can be a mechanism for helping guarantee non-recurrence. This will certainly be a sensitive and careful path to navigate, and the Action therefore proposes initial research and consultations to this end, accompanied by both initial and regularly updated conflict analysis to ensure conflict sensitivity.

On the other hand, political dialogue on interim arrangements and the terms of future peace need to consider how to integrate justice concerns of affected communities, the mechanisms currently administered by EAOs and improving the legitimacy of state systems. Better **understanding on potential convergence between these systems** will be essential, including if feasible on complementary processes to address grievances arising from past violations. As recognized by the 2012 United Nations High Level Declaration on the Rule of Law, access to justice, including transitional justice, is a key element of both conflict-prevention and peacebuilding, especially in assisting countries to break cycles of conflict.

Sustainable long-term support strategies are needed that foster attitudinal and behaviour change. **The action focuses on knowledge, skills and attitudes needed for justice authorities and civil society to champion reforms that will support peace and good governance.** Focusing on the next generation of civil society and lawyers is urgent to nurture new mind-sets as guardians against abuses of law, complemented by enabling pro-poor justice policy development and improving the quality of local justice providers.

To sum up, the Action will continue and build upon the features of the ongoing My Justice programme which is engaging in a way and at a level that has not been possible for 50 years: the justice sector, from the local level up, and bridging the formal and informal processes for dispute resolution. This approach is of interest to the government, with its stated commitment to improve the justice sector, work better with communities and provide services to them. There is also an opportunity to develop complementarities with other programmes that are more focussed on influencing change at the institutional level.

2 RISKS AND ASSUMPTIONS

Risks	Risk level (H/M/L)	Mitigating measures
Challenges to democratization and continued military state capture	M	Monitoring of the political context and ongoing EU engagement with government to strengthen political dialogue, share experience of democratic transition, strengthening the rule of law as a basis for sustainable peace and development, encourage greater judicial independence, support constitutional reform efforts, reinforce legislative capacity and provide electoral assistance; Address emerging challenges through providing platforms for policy dialogue and creating space for citizen-state interaction; Technical cooperation with key government institutions as part of a state-building approach that includes a clear commitment to human rights standards including accountability and effective remedies for violations.
Lack of cooperation amongst key justice sector institutions	L	Maintain constructive dialogue and interaction with state institutions and relevant semi-autonomous bodies including the Union Attorney General's Office, the Judiciary, the Union Legal Aid Board, the Anti-Corruption Commission, the Ministry of Home Affairs – in particular through participation in the Union Coordinating Body for Justice Sector

		Affairs (JSCB) via MyJustice’s existing advisory role and direct support to the Union Legal Aid Board. Build relationships and access to key non-state justice authorities.
Unresolved conflicts and/or new sources of instability and violence scuppers stability and the peace process falters	M	EU monitoring of the peace process and conflict affected areas supported by local level political economy and conflict analysis; continued support to the peace architecture as well as implementation of the nationwide ceasefire agreement (particularly article 25(a) of chapter 6 of the NCA regarding interim arrangements); engagement in conflict prevention and peacebuilding activities through support of post-conflict national dialogues to facilitate conflict sensitive and inclusive reconciliation and explore the role of both judicial and non-judicial mechanisms in reconciliation and peace.
Lack of stakeholder commitment and support at local level	L	Regular dialogue, confidence building and information sharing initiatives to link union/national level justice policy priorities with local level duty bearers and implementing partners; Local political economy analysis will assist to navigate and understand local context and power dynamics in support of the specific objectives of the action; Regional and State level Justice Sector Coordination Bodies will be assisted with role clarification, local action planning and coordination efforts.
Endorsing/strengthening processes that either lack legitimacy or fail to protect basic rights (whether informal justice process, EAO justice mechanisms or government ones).	HM	Ongoing close qualitative monitoring and feedback loops from beneficiaries/users of those processes and the service providers themselves, and ensuring interventions include normative content capacity development on an ongoing basis. Similarly ongoing conflict-sensitivity assessments should be applied to mitigate this risk. Capacity building of rights-holders and duty-bearers in human rights and gender equality and social inclusion / legal and rights education of local communities, living in most conflict-exposed and most vulnerable situations, with regards to human rights .
Assumptions		
<ul style="list-style-type: none"> • Sustained democratic transition and socio-economic development • Continued access to government counterparts and continued positive trajectory in the development of pro-poor national justice priorities • Willingness by civil society and legal profession to support/apply legal empowerment and human rights based approaches. • Peacebuilding efforts will increase inclusion, trust and participation, while ensuring access to justice for vulnerable communities • Justice institutions and providers will improve practices and promote trust among users • Current research findings on legitimacy and trust of community level justice providers is reliable and remains true 		

3 LESSONS LEARNT AND COMPLEMENTARITY

3.1 Lessons learnt

An overarching lesson learned is that **adaptive and iterative programming approaches are essential given the changing nature and unpredictable trajectory of Myanmar/Burma’s**

transition to peace and democratic consolidation. MyJustice has focused heavily on learning and adaptation, conducting regular internal reflection and external feedback exercises with partners, in addition to formal evaluations. At various points programming shifts were required to ensure a more effective response to challenges in CSO capacity, government opportunities and political context. Its recent Mid-Term Review confirmed that the Action adopted a “...*contextually responsive programming approach that is both relevant and necessary given the complexities of the Myanmar justice sector context*”.

A widespread public aversion to using formal justice mechanisms is based on deep-seated attitudes and experiences that will not be changed through improved knowledge alone. Increased legal awareness is widely recognized in Myanmar/Burma as necessary, although MyJustice national survey data reveals that improved knowledge must focus first on changing mindsets of communities and officials that view the law as an instrument of control, by building awareness of legal rights and how to use the law to effect change in how justice is sought and delivered. At the same time, their experience with the justice system needs to improve if trust is to be rebuilt. This is the result of decades of authoritarian rule and isolation, and it will take time for a rights-based culture to take root. The initial MyJustice legal awareness activities reached significant numbers of beneficiaries, but evidence of knowledge and behaviour change requires more time. MyJustice’s experience in providing community legal aid services through Justice Centres demonstrates that they are responding to a clear access to justice need and are accepted within the communities targeted. A state-supported legal aid system is the next step yet remains in its infancy.

Capacity remains limited both among civil society and justice institutions, particularly in relation to sustainable approaches to legal empowerment and participatory, evidence-based policy development. Civil society organisations have limited experience in promoting access to justice from a perspective of legal empowerment and participatory methodologies. To this end, efforts to support the effectiveness of their work in legal awareness or service provision must take account of the need to first strengthen their capacity. Managing multiple funding sources proves challenging for young civil society groups, with many unable to absorb funds as expected especially in trying new approaches or activities. For example, policy engagement remains a new area for many stakeholders both within and outside of government. There are also limited skills related to systematic documentation of key results and lessons learned. MyJustice’s Mid-Term Review commended the significant impact the Action has achieved, as demonstrated through unparalleled access and influence with policy-makers that facilitated their receptivity to evidence and research. For CSOs to make use of new platforms for engagement, longer term mentoring and support are needed to collect and effectively present data of local justice needs, formulate policy and pilot responses.

Key stakeholders acknowledge the importance of community level justice provision, yet the implications for conflict-affected areas and the role of justice concerns in peacebuilding efforts remain underdeveloped and disconnected. MyJustice national survey results revealed stark preferences for community justice services, often outside the formal justice system. Other research suggests that in conflict-affected areas this dynamic is even more pronounced. There has been broad acceptance of this recent evidence, although recognition of non-state justice provision remains limited in both justice reform discussions and peace-process efforts and would benefit from more targeted research and debate. Although discussions remain circumspect on specific justice mechanisms or processes to address underlying grievances that threaten progress on peace, especially in relation to allegations of rights violations in the context of armed conflict or that disproportionately

affect some ethnic/religious groups, MyJustice partners have demonstrated that thematic engagement is possible, such as in relation to land and restitution.

Indications of change exist, but a longer time horizon and greater focus on monitoring and evaluation capacity development is needed to see more concrete results at impact and outcome levels. The MyJustice Mid-Term Review confirmed internal programme learning that data collection and monitoring behaviour and attitude change in access to justice is difficult, but requires deep contextual understanding and context-specific indicators. Data collection relies heavily on local partners, who still lack capacity in results-oriented monitoring and evidence. The review identified solid progress against all result areas at output level, but that *“lessons from the programme (and international practice generally) show that deep-rooted change within the Myanmar justice system will take much longer than four years.”*²³

Sustainability of progress will require both official adoption of access to justice policy and service-delivery and public acceptance of such a role. The citizen-state trust deficit remains extreme. Building on the foundational work of MyJustice, including its early successes and key lessons, the follow-up action would broaden and deepen the impact of this early investment to ensure sustainable results for vulnerable communities, achieved through tailored, gender- and conflict sensitive interventions. The success of a state-supported legal aid system will be key, together with rights-based legal empowerment, complementary community-level justice services as well as fostering further evidence-based justice policy. The Action will include expanding to at least three additional conflict-affected states/regions beyond the six areas already covered by MyJustice, in order to focus on improving coherence between justice reforms and peacebuilding and reconciliation developments.

3.2 Complementarity, synergy and donor coordination

As political space has opened in recent years, actions with implications for the justice sector have understandably increased and expanded. The Union Coordinating Body for Rule of Law Centres and Justice Sector Affairs (JSCB) was established in February 2017 to strengthen the justice system by ensuring effective coordination across government agencies, international organizations, and civil society groups on rule of law and justice activities. EU MyJustice was appointed as one of the three advisors to this body, has played a key role in its actions to date and will continue to support its development. This high-level role complements MyGovernance by focusing on policy-making capacity development specific to the justice sector. Consequently the Action is well placed to prepare the grounds for a sector intervention, as it is supporting the government in preparing a sector strategy and related work on the new sector-wide coordination mechanism managed by the Union Coordinating Body for RoL centres and Justice sector Affairs (JSCB).

MyJustice has carefully developed its operations to ensure it either opens under-developed areas of activity, complements and consolidates the work of other justice sector actors or feeds into developing state mechanisms. Programmes by USAID and UNDP at the Union level, building capacity in formal justice sector institutions through case management, anti-corruption and training judges and prosecutors, important in the long-term, are specifically complemented by MyJustice’s community dispute resolution mechanisms, with their more immediate effects on community justice issues, and its intended work on ethnic justice systems. The twelve MyJustice-supported Justice Centres, in addition to their core provision

²³ MyJustice Mid Term Review, Page 40.

of free legal services, promote similar activities by actors in other parts of the country and support the effective functioning of the newly established Union Legal Aid Board (ULAB) since they are receiving referred cases as the Legal Aid Board is not yet functional for taking on cases, but statistics, lessons and forms are all being shared by EU current MyJustice programme to assist legal aid boards to get up and running. ULAB is currently starting to consider to reimburse Justice Centres and other legal aid lawyers or CSOs for taking on specific cases to become accredited providers under the state system. It might be a reality by end of current MyJustice programme but this would only be a fraction of the Justice Centres' cases so it wouldn't yet foreseeably replace the need for allocating funds to the Justice Centres although it is a step on the right direction for ensuring future sustainability.

The Action will allow for a continuation of MyJustice's active role in UNDP-hosted monthly rule of law coordination meetings and in convening policy dialogue events that bring together the Government, donors and the CSO/NGO community working on justice and rule of law issues.

Given the breadth of justice issues demanding attention and the depth of engagement required for justice policy development and implementation, MyJustice has focused on identifying and securing partnerships with a diversity of well-placed, reputable local and international organisations. The objectives of the Action will be pursued through continuing to harness their work on distinct themes and human rights issues; including LGBTI rights, women and girls, and the rights of people with disabilities and ethnic / religious minorities, and be thoroughly informed by the learning and informed perspectives of these entities. This generates synergies for a rich learning environment. The Action will benefit from effective collaboration to date with stakeholders at the state and Union level.

As an Action that builds the capacity of the state to fulfil human rights obligations and, in so doing, creates the conditions for democratic progress, it complements the work undertaken by the EU-funded MyPol (Reform of the Myanmar Police Force), Joint Peace Fund and STEP Democracy actions. MyJustice will share results and – where appropriate – its successful methods and modes of operating to create opportunities for more effective projects across the EU's portfolio. In particular, where actions are operating in hard-to-reach areas of conflict-affected states, including projects funded by the EU's thematic instruments, greater understanding of the environment and building on established relations will aid work where information is sparse and often disputed. Work in conflict-affected areas will support EU contributions in particular to the Joint Peace Fund and its focus on reinforcing the peacebuilding architecture and selected areas of research.

4 DESCRIPTION OF THE ACTION

4.1 Overall objective, specific objectives, expected outputs and indicative activities

The action will contribute to achieving the specific objectives set out in the Myanmar/Burma MIP 2014-2020:

1. Improved efficiency, effectiveness and accountability of public administration, strengthened justice sector capacity, improved access to justice and legal aid, and a more professional approach by justice sector agencies.
2. Improved institutional framework for the peace processes, improved trust and confidence, inclusive national dialogue, reform of the security sector and improved socio-economic recovery in conflict-affected communities.

The **overall objective** is to improve access to justice for women, the poor and people living in vulnerable situations, in Myanmar.”

The **specific objectives** are:

1. Legal empowerment of women, poor and vulnerable groups, including those affected by conflict, to use knowledge of legal rights and justice options and claim rights.
2. Community justice services, both formal and informal are more inclusive, transparent, accountable, equitable and the system will protect and promote fundamental rights.

The **expected outputs** are:

1. Communities/rights-holders are able to use and apply knowledge and understanding and claim their rights.
2. More and higher quality legal aid and ancillary services are available to women and people living in vulnerable situations..
3. Improved rights-based and gender responsive community based dispute resolution mechanisms.
4. Increased evidence and knowledge sharing to inform the justice policy.

This programme is relevant for the Agenda 2030. It contributes primarily to the progressive achievement of SDG 16 – Peace, Justice and Strong Institutions, but also promotes progress towards SDG 5 – gender equality. This does not imply a commitment by the country benefiting from this programme.

4.1.1 Main activities

Indicative activities for Output 1: The Action will **expand support and capacity development to civil society on access to justice** by applying new legal awareness tools and communication technologies(mobile phone applications, digital online information services, Facebook platform supported automatic information provision) with grass roots reach, providing grant support on rights awareness with a focus on legal empowerment approaches. Targeted multi-media campaigns will be accompanied by participatory methodologies (community theatre, games, quizzes, community-based dialogues) to promote legal empowerment on key justice issues such as gender-based violence, and encouraging vulnerable groups to seek effective and accountable justice pathways. Civil society will receive support to engage in more effective policy-oriented advocacy, monitoring and documentation of effective results, and development of financial sustainability models.

Indicative activities for Output 2: The Action will **support pilot Government's Legal Aid offices** and support the roll-out of the newly established Legal Aid system, including through assessment of initial pilots, in locations still to be decided since ULAB has set up boards in all states and regions but probably where the current MyJustice has project locations (6 states and regions). Other support will include ongoing leadership and management strengthening for the Boards, financial sustainability planning and development of professional standards and curriculum for legal aid providers; this will be complemented by **direct support to networks of justice centres and paralegals** delivering legal assistance services, possibly expanded to three new locations to be determined together with the EU Delegation, or broadening the scope of support already provided in existing Justice Centres, and including people detained on remand as target beneficiaries. The ground will also be laid for a **new generation of more effective rights advocates** through supporting university law faculties on reviewing and recommending reforms for legal education in curriculum design, teaching gender-sensitive and rights-based methods and assessment, as well as closer links to legal aid such as law clinics and national research capacity.

Indicative activities for Output 3: Scale up of **community based dispute resolution** of common disputes such as land dispossession and identity documentation for internal migrants/displaced people; increased focus on fairer and more gender-sensitive processes and outcomes; long-term sustainability built through **embedding skills and rights knowledge in national training**, and **protocols for local administrators and EAO entities**. **Research** and documentation of **justice mechanisms and processes in conflict-affected areas, and exploration of processes potentially applicable to advance peace** and reconciliation efforts. For example, since community/EAO entities mechanisms for conflict resolution will be documented, best practices can be used at a later stage for the peace process.

Indicative activities for Output 4: **Targeted gender-sensitive and rights-based research** on national and state/regional justice priorities, including root causes of grievances that may impede progress towards sustainable peace: longer-term **foundational efforts for acknowledgements of past grievances** can be supported by activities conducting research and gauging both public support and victims' priorities, plus potentially some limited sensitisation among CSOs and possibly policy makers about the principles and options/comparative experiences. Some exploratory **small scale initiatives might be explores around memory/acknowledgment**. Use of social media for positive influence to **counter hate speech** dominant uses will be explored. Activities will also be conducted for engagement with Union, State/Regional and EAO leaders and representatives for **policy dialogue on justice**; supporting establishment of **platforms for national partners** to profile evidence of justice needs and locally-owned responses; **support to coordination bodies** at union/state/regional levels and legal aid boards, justice sector budget analysis that includes gender and social inclusion assessment supporting policy development based on evidence derived from intensive monitoring, evaluation and learning of all programme support.

4.2 Intervention logic

The Action will build upon the foundations laid by MyJustice programme to deepen and extend the early progress towards results. The logic of how the intervention will achieve the desired objectives, referred to as the programmatic theory of change, also builds upon the approach tested and adjusted during MyJustice: the developed 'desired change' towards which it will work; which is not a final, or ideal static state to be 'delivered' by the Programme, but represents a process of change that the Action contributes to, and which can be progressed beyond the programme lifetime:

"People have the knowledge, confidence and opportunities to have their disputes fairly and equitably resolved"

The people of Myanmar, especially women and vulnerable groups, have limited knowledge of and means to access fair and equitable justice from either formal or informal sources. There are historically ingrained reasons for lack of access to justice, including the role of the state in perpetuating injustice and well-established practices of using the law as a means of control to maintain law and order, rather than to protect or promote fundamental human rights. This has resulted in low levels of trust between people and with the state, a dynamic which is exacerbated for women and girls, vulnerable or marginalised groups, including those in conflict-affected areas. As a result, people overwhelmingly rely upon community-level means of dispute resolution, whether provided by formal or informal services and actors. These reflect diverse local political dynamics, thereby limiting their inclusivity and accessibility to vulnerable groups too. This situation risks undermining gains in moving towards sustainable peace and development in Myanmar

The **hypothesis** underpinning the desired change statement considers how change could happen in the given context. It is based on a survey of evidence about successful pathways to change in the justice sector developed under ongoing EU support, but we must acknowledge both that: evidence to support justice sector programming is generally considered to be quite weak; and that in Myanmar the evidence underpinning justice reform initiatives is understandably absent. Unaddressed justice claims and grievances can drive conflict, whereas increased legitimacy of justice institutions that provide effective and equitable redress and acknowledgement can help build trust to end cycles of conflict. Many people remain unaware or reluctant to go beyond their community mechanisms, which heightens the importance of the quality of justice dispensed there and awareness of available options. Hence,

***If:** People have greater awareness of their rights, their options and pathways to access justice*

***And:** These options are supported to be more widely available, more inclusive, accountable and of a higher standard, reflecting people's justice needs*

***Then:** The options and services will become more responsive to the needs of the people and will continue to improve in terms of responsiveness and trustworthiness; and more people will be able to address their grievances and access justice-including women, groups living in the most vulnerable situations.*

***Because:** With increased knowledge, confidence and opportunities, people/the rights-holders will be able to have their disputes fairly and equitably resolved.*

It follows **then**, that the role of the Action will be to improve access to justice for women, the poor and vulnerable by a mutually reinforcing the quality of services provided by duty-bearers and empowerment of rights-holders.

Legal empowerment is an approach and set of methods that focus on building people's knowledge and confidence about how to use their rights. Engagement with formal justice services at the community level in a way that builds trust requires justice providers to demonstrate their role in defending rights, which legal aid providers and paralegals are well placed to do, as can community level dispute resolvers if supported to enhance their capacity. Each aspect of the framework is mutually reinforcing, creating a virtuous circle.

This **assumes** that:

- i) If people have the knowledge, confidence and opportunities to have their disputes fairly and equitably resolved, and their experiences of seeking justice are demonstrably different than in the past, then services will continue to improve in terms of responsiveness and trustworthiness.
- ii) There is sufficient will in the political leadership, formal and informal justice providers to champion change, including new generation of lawyers, paralegals, staff at the Justice Centres, and government policy changes that cut across all duty bearers (judges, law officers, GAD, Police, Legal Aid Boards).
- iii) Receptivity by policy makers to learn from evidence of local justice needs will translate into commitments to support effective pilots, engage with civil society input going forward so that positive outcomes can be embedded into justice, security and reconciliation policy reforms for long term sustainability.

4.3 Mainstreaming

Despite modest gains in **gender equality and women's rights** over the past five years, significant gaps remain in ensuring women and girls are equal participants and beneficiaries from political reforms, the peace process and socio-economic development. Research from the ongoing MyJustice programme demonstrates how poverty and gender are key drivers of vulnerability when it comes to access to justice, confirming women in rural areas with lower education are less likely to know about specific rights or be equipped to protect themselves. In addition, plural justice systems in Myanmar - controlled by the state and EAOs - have limited understanding of gender issues, increasing the vulnerability of women through a culture of impunity. Violence against women (VAW) continues to be widespread and cloaked in silence, being treated as a domestic affair bringing shame to the family and local community. The Department of Social Welfare has drafted a bill on Protection and Prevention of Violence against Women (PoVAW) in 2014, but it is yet to be passed into law. The Action will be consistent with the National Strategic Plan for the Advancement of Women (NSPAW) 2013-2022, the EU Gender Action Plan (GAP) 2016-2020, the EU Strategic Approach to Women, Peace and Security, and the draft MSDP (2018) to promote justice and rule of law without discrimination. A key objective of the NSPAW is to ensure that all women are empowered and able to enjoy their rights. The Action will support the empowerment of women and girls by providing legal information as well as promote better access to justice through the provision of gender sensitive responses in both the formal and informal justice systems. Media campaigns and other public outreach efforts will highlight motivating stories of change among women – ordinary women showing the courage to change and demand justice. The action will explore addressing justice concerns in mixed control and EAO's areas and thereby explore connections between promoting access to justice and establishing lasting peace. The action will seek to address the evidence gap on gender issues and the monitoring, evaluation and learning (MEL) framework will capture sex-disaggregated data further delineated by region/state, ethnicity and religion where possible.

The Action will mainstream **human rights** with a focus on ensuring the capacity of rights-holders to understand and claim their rights and the accountability of duty-bearers to respect and protect human rights. The Action will strengthen stakeholder awareness of the rights enshrined in the Universal Declaration of Human Rights and other main international treaties and conventions (CEDAW, ICCPR, ICERD, CAT, CAC²⁴, inter alia) and will systematically reference these in its work to support conflict prevention, peacebuilding activities, transitional justice imperatives as well broader justice sector reforms.

Awareness and fight against hate speech will be a cross cutting element around fundamental rights awareness (eg the limits of freedom of expression, balancing rights) with CSOs, lawyers and community leaders being agents of change and ultimately feeding into policy solutions.

Although climate change is not a focus area for this Action, it will contribute to **enhanced environmental management** and more cohesive, resilient communities able to peacefully resolve disputes. Capacity building efforts with non-state actors and government institutions will include policies and good practice related to environmental protection.

²⁴ Convention on the Elimination of all Forms of Discrimination Against Women, International Covenant on Civil and Political Rights, International Convention on Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention against Corruption.

4.4. Contribution to SDGs

This intervention is relevant for the 2030 Agenda. It contributes primarily to the progressive achievement of SDG 16 – Peace, Justice and Strong Institutions while also contributing to SDG 5 – Gender Equality by supporting the empowerment of women and girls by providing legal information as well as promote better access to justice through the provision of gender sensitive responses in both the formal and informal justice systems.

5 IMPLEMENTATION

5.1 Financing agreement

In order to implement this action, it is foreseen to conclude a financing agreement with the partner country.

5.2 Indicative implementation period

The indicative operational implementation period of this action, during which the activities described in section 4 will be carried out and the corresponding contracts and agreements implemented, is **60 months** from the date of entry into force of the financing agreement.

Extensions of the implementation period may be agreed by the Commission’s responsible authorising officer by amending this Decision and the relevant contracts and agreements.

5.3 N/A

5.4 Implementation modalities

The Commission will ensure that the EU appropriate rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures²⁵.

5.4.1 Indirect management with a Member State Organisation

This action may be implemented in indirect management with the British Council²⁶. This implementation entails (1) the legal empowerment of women, poor and vulnerable groups, including those affected by conflict, to use knowledge of legal rights and justice options, as well as (2) providing support to community justice services, both formal and informal so that they are more inclusive, equitable and protect fundamental rights.

The envisaged entity has been selected using the following criteria:

1. Capacity to mobilise all the required technical expertise, as well as office facilities, equipment, assets and logistical support
2. Political neutrality and good reputation in Myanmar/Burma
3. Strong in-country relationships established across key government agencies and justice sector stakeholders

²⁵ www.sanctionsmap.eu Please note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy between the published legal acts and the updates on the website it is the OJ version that prevails.

²⁶ Myanmar/Burma is listed as a Least Developed Country under ODA recipient list established by the OECD

4. Proven capacity to provide organic responses to external contextual changes
5. Previous work in access to Justice in Myanmar

The EUD selected **British Council (BC)** based on the following assessment:

- **(Selection criteria 1 and 5):** selecting BC for this new phase of *MyJustice* would allow building on current investments, and maintaining and expanding current relationships with its existing implementing partners. BC demonstrated in past editions of *MyJustice* a strong implementation capacity in a challenging environment. It would also facilitate a seamless transition into this new phase and ensure a coherent approach to ongoing interventions, including the support to established Justice Centres and the development of a state-backed legal aid system.
- **(Selection criteria 2 and 5):** the BC retains a well-earned reputation in Myanmar/Burma for political neutrality, ensuring its ability to work discreetly and with the trust of a wide group of relevant stakeholders. BC also shown ability to facilitate much-needed links between community and institutional levels. BC's has intervened in justice-linked programmes for more than 12 years in multiple fragile states.
- **(Selection criteria 3 and 5):** the Action requires a close working relationship with the Union Attorney General's Office and a wide range of other key stakeholders, including the judiciary, other government agencies, civil society and the media, which the BC has fully developed during the implementation of the programme *MyJustice*.
- **(Selection criteria 3 and 5):** the BC has worked with the human rights defenders community from 2004. In particular, BC worked in a programme that includes a component dedicated to the rule of law (operational since 2008). Thus, it has clear insight into the developments within the justice sector and a comprehensive understanding of the challenges facing the key institutions, which support the rule of law and access to justice, as well as their interaction with the society that they should support.
- **(Selection criteria 3 and 5):** the BC possesses unique expertise on rule of law and access to justice in Myanmar/Burma. It shows strong in-country relationships established across key government agencies and justice sector stakeholders, including a wide range of non-state actors. BC also has significant experience in managing similar programmes in East Asia, South Asia, Sub-Saharan Africa and the Middle East/North Africa supported by high quality technical capacity, management and accountability.
- **(Selection criteria 4):** the recently completed Mid-Term Review of the ongoing *MyJustice* programme (implemented by BC) confirmed "*the programme is responsive to external contextual changes, as well as an internal understanding of delivery challenges and opportunities within the justice sector in Myanmar. This is particularly evident in programme-level decisions to engage with specific government actors or to engage certain partners to deliver discrete projects that address these challenges and/or respond to opportunities*".

If negotiations with the above-mentioned entity fail, that part of this action may be implemented in direct management in accordance with the implementation modalities identified in section 5.4.2.

5.4.2 Changes from indirect to direct management mode due to exceptional circumstances Grants (direct management)

(a) Purpose of the grant(s): The objectives and expected results of the grants will be to improve access to justice among women, the poor and vulnerable, to contribute towards sustainable peace and development in Myanmar, as described in sections 4.1 and 4.2.

(b) Type of applicants targeted: In order to be eligible for a grant, the applicant must:

- be a legal person,
- be a specific type of organisation such as: non-governmental organisation, public sector operator, local authority, international (inter-governmental) organisation,
- be directly responsible for the preparation and management of the action with the co-applicant(s) and affiliated entity(ies), not acting as an intermediary.
- be established in²⁷ a Member State of the European Union or in an eligible country for funding under the DCI Regulation, as stipulated in Article 9 of the Common Implementing Regulation (CIR). This obligation does not apply to international organisations.

5.5 Scope of geographical eligibility for procurement and grants

The geographical eligibility in terms of place of establishment for participating in procurement and grant award procedures and in terms of origin of supplies purchased as established in the basic act and set out in the relevant contractual documents shall apply, subject to the following provisions.

The Commission's authorising officer responsible may extend the geographical eligibility on the basis of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where the eligibility rules would make the realisation of this action impossible or exceedingly difficult.

5.6 Indicative budget

	EU contribution (amount in EUR)	Indicative third party contribution, in EUR
Expected Outputs 1, 2, 3 and 4 composed of		
Indirect Management with the British Council cf. section 5.4.1	19 800 000	N.A.
Evaluation (cf. section 5.9), Audit (cf. section 5.10)	200 000	N.A.
Total	20 000 000	N.A.

5.7 Organisational set-up and responsibilities

A MyJustice II **Steering Committee** (SC) will be established to review the performance of the Action, identify opportunities and risks, as well as to ensure coherence of overall

²⁷ To be determined on the basis of the organisation's statutes, which should demonstrate that it has been established by an instrument governed by the national law of the country concerned and that its head office is located in an eligible country. In this respect, any legal entity whose statutes have been established in another country cannot be considered an eligible local organisation, even if the statutes are registered locally or a 'Memorandum of Understanding' has been concluded.

implementation. The SC will be chaired by the EU Delegation representative and it will be co-chaired by the Government of Myanmar, possibly the Union's Attorney General Office (UAGO) to ensure full ownership of the Action. British Council will take active part in the SC **(as a member)** and **will** ensure secretariat functions.

This SC will monitor progress and endorse annual work plans. It will meet every 6 months.

Detailed terms of reference for both SC and other governance bodies will be developed by the British Council and approved by the EU Delegation when negotiating Contribution Agreement²⁸ and/or during the inception phase.

In addition, a MyJustice II **Programme Advisory Committee** (PAC) will be set up and meet twice a year, in consultation with the Union Attorney General's Office, to provide an additional external source of high level context analysis, ensure responsiveness to the local context and serve as a group of critical friends to cross-check assumptions, analysis and performance. It should challenge MyJustice's thinking while offering constructive feedback on how to improve. Current constituency of PAC is formed by prominent political, formal law institutions and civil society figures. The new PAC constituency, which is non-remunerated, will be finalised after the update of the political economy analysis and will probably include figures representative of the peace process. PAC operates as a forum in which there can be frank and open discussions. As it is not a decision-making body it will neither involve voting nor seek consensus, but will recognize different voices and views. These views will be recorded in a meeting summary, but not attributed to individual members, according to the Chatham House Rule. Meetings will be chaired on a rotating basis Other Working and Advisory Groups will be established as necessary.

Finally, and regarding the grants awarding component to be defined during the inception phase after the lessons-learnt of the current ongoing Action, it will follow established British Council policies and procedures, and the EU Delegation shall be invited at the evaluation panels.

5.8 Performance and Results monitoring and reporting

A **results-based monitoring, evaluation and learning framework** for deepening access to justice will be refined during the inception period. This will allow monitoring of effectiveness and impact, and coordinated implementation to deliver expected results. The framework will include a full set of outputs and outcome indicators, and an activity-based budget linked directly to expected results and specific objectives. The framework will be agreed by the MyJustice II Steering Committee at the end of the inception period.

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process and part of the implementing partner's responsibilities.

To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular **progress reports** (not less than annual) and **final** reports. Every report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (outputs and direct outcomes) as measured by

²⁸ Individual legal commitments shall be aligned with the requirements on taxation and anti-money laundering outlined in the Financial Regulation (EU, Euratom) 2018/1046

corresponding indicators disaggregated when possible by gender, ethnicity and religion, using as reference the logframe matrix (for project modality). SDGs indicators and, if applicable, any jointly agreed indicators as for instance per Joint Programming document should be taken into account.

The monitoring processes for the Action shall be further elaborated in consultation with the Union Attorney General's Office in light of the development of national and sectoral planning frameworks – in particular the Myanmar Sustainable Development Plan (2018) recently approved. The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the action. The final report, narrative and financial, will cover the entire period of the action implementation.

The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

5.9 Evaluation

Having regard to the importance and nature of the action, **mid-term and final evaluations** will be carried out for this action or its components via independent consultants contracted by the Commission.

A mid-term evaluation will be carried out for learning purposes, in particular with respect to obtaining an in-depth understanding of programme performance and progress in order to fine tune implementation arrangements and implementing approach. A final evaluation will be carried out for accountability and learning purposes at various levels (including for policy revision), taking into account the development of a coordinated approach to justice sector reform, as well as the complex peace process in Myanmar/Burma.

The Commission shall inform the implementing partner at least two months in advance of the dates foreseen for the evaluation missions. The implementing partner shall collaborate efficiently and effectively with the evaluation experts, and inter alia provide them with all necessary information and documentation, as well as access to the project premises and activities.

The evaluation reports shall be shared with the partner country and other key stakeholders. The implementing partner and the Commission shall analyse the conclusions and recommendations of the evaluations and, where appropriate, in agreement with the partner country, jointly decide on the follow-up actions to be taken and any adjustments necessary, including, if indicated, the reorientation of the project.

Evaluation services may be contracted under 2 framework contracts in in 2022 and 2024.

5.10 Audit

Without prejudice to the obligations applicable to contracts concluded for the implementation of this action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments for one or several contracts or agreements.

It is foreseen that audit services may be contracted under a framework contract.

5.11 Communication and visibility

Communication and visibility of the EU is a legal obligation for all external actions funded by the EU.

This action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation²⁹.

In terms of legal obligations on communication and visibility, the measures shall be implemented by the Commission, the partner country, contractors, grant beneficiaries and/or entrusted entities. Appropriate contractual obligations shall be included in, respectively, the financing agreement, procurement and grant contracts, and contribution agreements.

The Communication and Visibility Requirements for European Union External Action (or any succeeding document) shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

²⁹ Communication and visibility activities will be covered by the Contribution Agreement with the British Council

APPENDIX - Indicative Logframe matrix (for project modality) ³⁰

	Results chain: Main expected results (maximum 10)	Indicators (at least one indicator per expected result)	Sources of data	Assumptions
Impact (Overall Objective)	To improve access to justice among women, the poor and vulnerable in Myanmar	<i>I(1) Average Rule of Law score (as measured by the Worldwide Governance Index) (** EU RF Level 1 #4 I(2) Average Voice and Accountability score (as measured by the Worldwide Governance Index) (** EU RF Level 1 #6)</i>	1 and 2. Worldwide Governance Index Report	<i>Not applicable</i>
Outcomes (Specific Objectives)	SO1-Legal empowerment of women, the poor and vulnerable groups, including those affected by conflict, to use knowledge of legal rights and justice options. SO2- Community justice services, both formal and informal, are more inclusive, equitable and protect fundamental rights	<i>I(1.1): Number of poor and vulnerable people, including women and those affected by conflict, have increased knowledge of rights and legal options disaggregated by sex and ethnicity who report applying knowledge gained from the Action” (this can be defined as taking action at community level, seeking fairer services, etc) I(1.2): Capacity of CSO partners to impart legal awareness increased. I(1.3): The status of inclusivity clusters in the succeeding drafts of the justice sector strategies (**EU RF Level 2 #4) I(2.1): Level of availability of justice services in the communities I(2.2): Number of people who have received legal aid and legal advice through community justice centres disaggregated by sex, location and vulnerable groups (youth, children, disabled, minority).(**EU RF Level 2 #4) I(2.3): Extent to which practices of community based dispute resolution (CBDR) actors reflect knowledge gained through the Action, disaggregated by type of dispute resolved</i>	1.1 Baseline and endline studies 1.2 Activity reports and in and out tests. 1.3 Population based surveys 1.4 Case documentation 2.1 Activity reports, including case monitoring, in and out tests. 2.2 (Budgeted) User surveys 2.3 Qualitative case documentation	1-Increased awareness and understanding of rights and justice service options will lead to greater demand for more capable, accountable and responsive justice services 2.a-There is a will among service providers, both formal and informal, to change behaviours and practice 2.b-Availability will lead to an increase in people seeking justice services 2.b-Policy and legal changes supporting CSOs and vulnerable groups
Outputs		<i>IO(1.1) Number of CSO representatives who</i>	SD(1.1) Training	A(1) Increased awareness and

³⁰ Mark indicators aligned with the relevant programming document mark with '*' and indicators aligned to the EU Results Framework with '**'.

	<p><i>As per section 4 of the Action Document</i></p> <p>Output 1. Strengthened Communities' knowledge and understanding and claiming their rights.</p> <p>Output 2. More and higher quality legal aid and ancillary services are available to women and people living invulnerable and exposed situations.</p> <p>Output 3. Improved community based dispute resolution mechanisms.</p>	<p><i>participate in capacity building for using legal empowerment strategies at the community level disaggregated by sex, ethnicity and location of CSOs</i></p> <p><i>IO(1.2) Number of people reached through various legal empowerment strategies, including targeted mass media campaigns and community-based strategies(e.g. outreach sessions, community theatre performance)</i></p> <p><i>IO(2.1) Number of justice centres and State legal aid offices operating with the support of the Action from a rights-based approach and in a gender responsive manner</i></p> <p><i>IO(2.2) Number of lawyers and paralegals trained on fair trials standards, disaggregated by sex , ethnicity and location</i></p> <p><i>IO(2.3) % of lawyers and paralegals trained whose knowledge of fair trials standards, gender equality and human rights has increased, disaggregated by sex and ethnicity</i></p> <p><i>IO(2.4) Number of law students participating in mock courts and trials activities, disaggregated by sex, ethnicity and locality</i></p> <p><i>IO(2.5) % of law students participating in mock courts and trials whose legal knowledge has increased, disaggregated by gender, ethnicity and locality</i></p> <p><i>IO(3.1). Number of community based dispute resolution (CBDR) actors trained, disaggregated by sex, ethnicity and religion and age</i></p> <p><i>IO(3.2) % of actors conducting CBDR trained by the Action who improved their knowledge of fair approaches, gender equality and human rights ,disaggregated by sex, ethnicity and religion</i></p>	<p>reports</p> <p>SD(1.2) Project annual progress reports and monitoring of media campaigns</p> <p>SD(2.1) Annual project progress report and Justice Centre client record</p> <p>SD(2.2) Annual project progress report</p> <p>SD(2.3) In and out tests</p> <p>SD(2.4) Annual project progress report</p> <p>SD(2.5) In and out tests</p> <p>SD(3.1) Training progress reports</p> <p>SD(3.2a) In and Out tests</p> <p>SD(3.2b) (Budgeted) user surveys</p>	<p>understanding of rights and justice will stimulate behaviour change resulting in greater demand for more capable, accountable and responsive justice services.</p> <p>A(2.a) Supporting the strengthening of justice services will lead to them becoming more responsive to people's needs, and that wider availability and better practices will lead to more people using them.</p> <p>A(2.b) Justice centres and legal aid offices are stable and well-funded</p> <p>A(2.c) Growing demand for legal aid services</p> <p>A(2.d) No interferences by state justice system into legal aid providers' activity</p> <p>A(2.e) Reasonable time for adapting the curricula</p> <p>A(3.a) Inclusive and representative community based dispute resolution mechanisms will improve access to justice for poor and vulnerable people.</p> <p>A(3.b) Capacity of the CBDR actors</p> <p>A(3.c) Perception and trust by the community members</p> <p>A(3.d) Effective coordination with legal aid providers</p>
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	<p>Output 4. Increased evidence and knowledge sharing to inform the justice policy.</p>	<p><i>IO(4.1). The Justice Sector National strategy takes stock of Action's research, findings and learning</i></p> <p><i>IO (4.2) Number of justice policy forums featuring Action-supported engagement (policy actors, think-tanks, media)</i></p> <p><i>IO (4.3) Number of participants from government and non-government organisations, to whom the Action research findings are disseminated by sex, ethnicity, age, disability and religion</i></p>	<p>SD(4.1) Level of analysis and proposed action regarding the Access to Justice component in the Justice Sector National Strategy s</p> <p>SD(4.2) Case documentation and report in Annual project progress report</p> <p>SD(4.3) Project Annual progress report</p>	<p>A(4.a) Robust, better informed policy frameworks will facilitate better promotion and protection of rights/access to justice for vulnerable people.</p> <p>A(4.b) The authorities, justice sector actors have capacity and willingness to engage into further dialogue</p> <p>A(4.c) The capacity of policy dialogue parties allow inclusion of issues and problems into the agenda for an improved policy, incorporating inclusiveness, conflict sensitivity and responsiveness.</p>
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