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UNDERSTANDINGS OF JUSTICE IN MYANMAR

The multitude of justice challenges confronting people in Myanmar means that there is significant scope for, and interest in, rule of law and access to justice programmes among both foreign and domestic actors.

While attention to justice concerns is welcome, there is a danger of taking for granted that there are shared and agreed understandings about the meaning of justice and its role in society.

MyJustice research on local level access to justice in Myanmar shows that such a consensus does not exist and that the concept of justice is understood differently with, at times, competing meanings across the country.¹ These meanings are rooted in Myanmar's political history, perceptions of the justice system and socio-religious norms. Understanding these influences on notions of justice is centrally important to any efforts to strengthen, reform, or improve the provision of 'justice.'

DIVERSE UNDERSTANDINGS OF JUSTICE

What are considered legitimate processes and outcomes of justice vary across time and place. In Myanmar, as elsewhere, there is no single coherent narrative about what justice

means. A range of meanings are attributed to justice, as set out in Box 1. These demonstrate the diversity of understandings of justice, complicating programming efforts in the justice sector.

As the meanings set out in Box 1 suggest, justice can be thought of both as a process and as an outcome. The process relates to how justice is administered – that is, the range of mechanisms people use to resolve disputes and seek redress for injustices. Justice outcomes are what is considered just in terms of how a dispute is resolved. Both are shaped by the political context and normative beliefs.

COMMUNITY RESPONSES TO THE QUESTION, 'WHAT IS JUSTICE?'

- Justice is when big problems are made small and small problems are made to disappear.
- Justice is when there is a dispute that is resolved with both sides agreeing.
- Justice is about being at peace with yourself.
- Justice is when the ward administrator mediates and resolves an issue without bias, including punishment to fit a crime.
- Justice is when there is a fair hearing of all parties.

¹ This briefing paper draws on research that informed the MyJustice report: "Making big cases small and small cases disappear": Experiences of local justice in Myanmar, involving interviews and focus group discussions with 600 respondents in three Townships in Mon State and three Townships in Yangon Region in June and August 2016. The findings reflect experiences in the research locations but cannot be said to be representative of the rest of the country. See Denney et al., 2016 for further information on research methods.

See MyJustice Briefing Paper 2 on Myanmar's Plural Justice

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process of justice is often affected by cost and corruption – with a common belief expressed by respondents that people can buy the result that they want at all levels of the justice system, or make informal payments to speed along the process. As one respondent noted: *‘For me, money is everything. If you have money you can get everything. If you don’t have money, you have to know how to be very patient because it will take a long time.’*

Other respondents claimed that justice processes were unfair and that women could not receive a fair hearing vis-à-vis their husbands, for instance. Muslims and Hindus (religious minorities) said that they would not report a dispute with a Buddhist as they do not believe they would receive a fair hearing. Similarly, people of non-conforming genders and sex workers claimed that their criminalised identities meant that they could not seek protection of the law.

JUSTICE AS AN OUTCOME

While these recognised flaws in justice processes can affect community perceptions as to whether outcomes are fair or legitimate, this is not always the case. In cases of dispute resolution, what seems to matter most to people is that a resolution is achieved or the problem is made to disappear (kyi de amu nge say, nge de amu papyauk say). With regard to criminal cases, it was often more important that the ‘right’ decision was seen to be made (that is, one that accords with community views about who is at fault), at times regardless of whether the process that led to the decision is seen to be fair.

The most dominant understanding of justice outcomes that emerged from MyJustice research was ‘making a problem disappear’. A problem can be made to disappear in a range of ways. This might be by resolving the matter within oneself and not reporting to any third party. It may be resolved through

reconciliation or mediation by a W/VTA, or by appealing to the authorities, following a court process, or in extreme cases, involving official or unofficial security forces to settle disputes through the threat of violence.

An eagerness to make problems disappear, however, as well as an aversion to formality, leads to a general willingness to solve disputes at the lowest level possible – usually no higher than the W/VTA.

Because the W/VTAs are overseen by the General Administration Department (GAD), responsible for administration and law and order, resolving disputes at the lowest level tends to lead to a prioritisation of communal harmony and as little disruption as possible to the status quo.

INFLUENCES ON UNDERSTANDINGS OF JUSTICE

An emphasis on making problems disappear and resolving disputes at the lowest level reflects a complex constellation of socio-religious beliefs, the weight of Myanmar’s political history, as well as limited understandings of justice amongst some groups.

SOCIO-RELIGIOUS BELIEFS

Myanmar’s overwhelmingly Buddhist population (almost 90%) practice a conservative branch of Buddhism known as Theravada (‘the doctrine of the elders’). This affects beliefs about how problems are appropriately dealt with. Problems are understood to be the result of fortune and can only be resolved within oneself by coming to peace through detachment (Schober, 2011). Moreover, accepting problems is understood as a way of paying off past life debts, thus ensuring good karma in future. Seeking resolution of problems through third parties can mean past debts are not paid. Similarly,

it is commonly believed that those who cause harm will be punished in their future lives – making third party resolution unnecessary. Many people thus perceive experiences of injustice as a deserved and almost inevitable consequence of fortune that must be personally endured, rather than externally resolved. This can mean that crimes, disputes and injustices are not reported, making it difficult to gauge the extent of justice needs in the country.

MYANMAR'S POLITICAL HISTORY

In addition, Myanmar's political history has led to particular ideas of justice being promoted that have influenced how the concept is now thought about. Under the military government, justice was formally understood in terms of top-down law and order – focused on stability and the enforcement of laws to protect the peace (Cheesman, 2015). Reporting disputes in this context can be seen as an affront to social order and hierarchy. The law and order approach to justice also means that rights-protection functions of justice have not been emphasised. There is not, therefore, a sense of the law as an avenue to assert or protect rights.

Justice is generally thought of as criminal justice (not an uncommon understanding in many countries with experiences of colonialism). The law is widely understood as applicable to criminals and irrelevant to law-abiding citizens. For example, many women responded that they did not know anything about the police because they obeyed the law and so had no need to interact with them. The law, and the justice system more broadly, are seen to exist for punishing wrongdoers, rather than for protecting the legal rights of all people.

More broadly, the politicisation of the judiciary under military rule means that the justice system – like the state more generally – is

widely distrusted. The courts and police are the least trusted institutions in Myanmar (at 32% and 27%, respectively), according to a 2015 Asian Barometer survey (Welsh and Huang, 2016: 56). The justice system has thus not cultivated understandings of justice with positive connotations. People do not feel that institutions mandated with 'justice' functions can deliver for them.

People also have a learnt fear of the state, especially in areas with a history of ethnic armed conflict. While changes are underway, the ongoing use by various authorities of criminal sanctions against those who challenge government or military actions, continues to be a barrier to building trust in the justice system (ICJ, 2015).

LIMITED KNOWLEDGE OF THE LAW AND RIGHTS

Finally, knowledge of protections available under the law and rights are limited, particularly amongst women and religious minorities. Women frequently reported not understanding or knowing the law, which deterred them from using the formal justice system in particular. By contrast, Muslims and Hindus did not speak of a lack of understanding of the law, but had limited awareness of some forms of discrimination against them. For instance, Muslims who had had their identity card ('pink card') replaced with a national registration card ('three-fold card') were not aware that this in fact removes rights they had previously been granted (see also MLAW and EMR, 2014: 34-5).

These dynamics strongly influence local understandings of justice; any efforts to work on justice issues in Myanmar must be cognisant of them. The socio-religious norms, political history and limited rights awareness mean that people's conceptions of 'justice' can often mean keeping status quo power relations intact, stifling change.

Many people thus perceive experiences of injustice as a deserved and almost inevitable consequence of fortune that must be personally endured rather than resolved.

IMPLICATIONS FOR JUSTICE POLICY AND PROGRAMMING

The local understandings of justice processes and outcomes captured in this briefing paper can be more or less discriminatory, impartial or rights-protecting. An interest in expanding rights protection, impartiality and equality before the law reveals that justice in Myanmar remains characterised by issues of corruption, discrimination and a lack of rights protection and impartiality.

There are thus areas where these principles could be better reflected in local understandings of justice, offering a potential entry point for justice programming. However, simply raising awareness of justice and its importance risks reinforcing perceptions of justice as law and order, or internal resolution, rather than critically engaging with such understandings. This could actually do harm. An alternative place to start instead could be to broker community conversations about what justice means and what role it can play in Myanmar’s future. Similarly, discussing what rights are, how they sit alongside responsibilities and how people can use the law to exercise and protect them could help challenge ideas of justice being about ‘making big cases small, and small cases disappear’.

This recommendation should not imply that understandings of justice need to shift towards a preference for formal-legal processes and the often-punitive approaches these entail. Aside from there being significant value in reconciliatory justice, it is also the reality for much dispute resolution in Myanmar. This reality should be worked with, not against. Programmes should engage with the W/VTAs, as the most widely used justice provider, and the range of justice facilitators that act as a link to justice providers (including elders, 10 and 100 household heads and community-based organisations).’ In this way, the desire for social harmony can be harnessed in positive ways, while working towards greater non-discrimination and rights protection.

Shifting societal attitudes is a long-term process, which will likely face resistance from those who perceive such discussions as disruptive to social harmony. Working in support of locally legitimate and trusted actors is therefore key to ensuring changes are locally relevant and owned, rather than imposed or perceived as an affront to religious and cultural norms. Efforts to improve the quality of justice should focus on making all available mechanisms fair, rights-protecting and responsive to heterogeneity of need, rather than about privileging certain providers over others.

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