

RESEARCH SUMMARY

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MyJustice is a four year access to justice programme funded by the European Union and implemented by the British Council, the overall objective of which is to improve access to justice and legal aid for the poor and vulnerable.

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MAKING BIG CASES SMALL & SMALL CASES DISAPPEAR

This summary is drawn from a detailed MyJustice report which documents the lowest, and most used, levels of dispute resolution in communities in two parts of Myanmar – Mon State and Yangon Region. Drawing on interviews and focus group discussions with 600 people, the report sets out the common disputes, crimes and injustices that people speak of experiencing, the ways people seek to resolve these issues and why, as well as an assessment of the quality of justice they are able to achieve.

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

Such notions of extremely localised justice have been encouraged by decades of authoritarian rule, conflict and corruption that have prevented the building of trust in state institutions, including the justice sector. This combines with socio-religious norms that encourage people to deal with problems within themselves to pay off past life debts and ensure good karma. A lack of reporting, as well as a preference for resolving issues that are reported at the lowest level, result in an emphasis on maintaining peace and order over social disruption. Fair and non-discriminatory justice is thus sorely needed – and yet often not demanded.

This situation is particularly pernicious for groups commonly discriminated against, including the poor, women, ethnic and religious minorities and non-conforming genders. These groups face particular challenges in accessing justice.

COMMON DISPUTES, CRIMES AND INJUSTICES

Focus groups revealed a range of disputes, crimes and injustices. Most common amongst these, particularly in Yangon, were debt disputes, resulting from informal lending at exorbitant interest rates that trap people into taking out additional loans to pay off existing ones.

Discrimination against women, the poor, religious and ethnic minorities and non-conforming genders is widespread, which also puts them at a disadvantage in accessing fair and non-discriminatory justice. For religious minorities and poor unregistered migrants, discrimination often comes to a head around difficulties in obtaining national identity cards, without which it is difficult to exercise a range of rights.

Violence against women and children is widespread, with domestic violence particularly common – although rarely acknowledged by men. Abandonment was a common experience in parts of Mon State where men had left to find work overseas and cut off contact and support with their wives and children. Rape of minors was also spoken about in a large number communities. Human trafficking was talked about in Mon State and mostly affected girls.

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Land disputes are a common feature across Mon State and Yangon Region, relating to historic land grabs by the military and government, illegal sale of land by authorities or tenants, squatting by unregistered migrants, inheritance disputes and disputes amongst neighbours about land boundaries.

Labour disputes were a growing concern in industrial communities in Yangon Region, where the majority young female workforce complained of poor conditions and pay in the city's factories. While labour unions are attempting to play a stronger role, they remain poorly understood.

The use and sale of drugs were seen as crimes, as well as a trigger for disputes within communities, especially in Mon State. Yet the perception was that only drug users are punished, with sellers avoiding justice.

Finally, a range of crimes and disputes related to public insecurity were spoken about across research sites, including murder, theft and robbery, youth fighting, motorcycle accidents and violations by the security sector.

HOW PEOPLE RESOLVE DISPUTES

A focus on how people resolve disputes and injustices should not distract from the fact that many people do not report such matters at all, preferring to internalise the problem and make peace with it. Where people do report, they rely on a plural set of justice facilitators and providers. The ways that people engage with these plural providers varies depending on location, identity, trust in providers and the nature of the dispute.

Justice facilitators are usually the first line of reporting for most people who seek third party resolution. Facilitators include neighbours, 10 and 100 household

heads, elders, community-based organisations, religious leaders, political party representatives and, in rare cases, astrologers and fortune tellers. These facilitators listen, provide advice and can act as a link to justice providers. In many cases, disputes (particularly those involving women or religious minorities) do not proceed further. If the facilitator deems the matter serious they may encourage complaint to a justice provider.

At the justice provider level, most cases only go as far as the Ward/Village Tract Administrator (W/VTA). W/VTAs describe using a combination of Union Law and custom or village law to resolve disputes. They routinely mediate in an attempt to find a swift resolution, ideally by compromise.

Where a W/VTA is not able to resolve a dispute, or where the parties are not satisfied with the W/VTA's decision, matters can be referred to the police and court system, or to the courts of ethnic armed organisations (EAOs). These justice providers are rarely used by women in particular. It is widely perceived that the costs involved in the formal justice system are prohibitive for most citizens.

Although higher-level justice providers do exist, they are very rarely used and in some cases are not known about. Notably, there are no clear justice chains or redress mechanisms available for those suffering discrimination.

HOW PEOPLE MAKE DECISIONS ABOUT WHERE TO REPORT

A strong reliance on custom means people tend to follow known procedures and the steps expected of them – even where they do not trust those involved in the justice chain. The nature and severity of a dispute can also influence where people go to report a



Watermelon seller, Yangon- Bago highway, November 2016. © MyJustice

matter. In addition, shared identity with justice providers (such as W/VTAs and EAO courts), as well as perceived effectiveness and ability to make a binding decision were among the strongest drivers of justice-seeking behaviour. After this, a geographic, financial, linguistic and cultural accessibility issues influenced decisions.

The only people who appear to factor issues of fairness into their decision-making are groups that are discriminated against: religious minorities, women, non-conforming genders and sex workers. Because these groups perceive all justice avenues to be unfair, they tend not to report at all.

IMPEDIMENTS TO FAIR AND NON-DISCRIMINATORY JUSTICE

Unfair and discriminatory outcomes are often attributable to the inconsistent and discriminatory processes that precede them. Local understandings of justice, as well as a preference for resolving cases at the lowest

level, play a part in delivering unfair and discriminatory outcomes. Because justice is often equated with the disappearance of a problem, with people accepting whatever path that leads to closure most quickly, outcomes can fall short of protecting rights and being fair and non-discriminatory.

Similarly, a lack of clarity regarding the functions, jurisdictions and decision-making processes of different justice providers can lead to arbitrary justice outcomes. W/VTAs receive limited training and make decisions that are often more in accordance with their administrative function under the General Administration Department, rather in the interests of rights protection, fairness and non-discriminatory justice. Police are also said to mediate disputes that should be investigated and prosecuted.

Finally, corruption means justice outcomes can be bought at all stages. It is difficult to imagine how justice can be (and can be seen to be) fair and non-discriminatory when this is the case.

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RECOMMENDATIONS

Ongoing political contests in Myanmar and competing sources of power mean that who, and what, donors support in justice reform will have deeply political ramifications.

External actors should be conscious of not defaulting to a state-building approach, which is especially sensitive in Myanmar. There is also a need to be realistic about what externally led programmes can achieve.

It is important that programmes do not rely on standard interventions, without interrogating whether they are actually likely to be helpful in Myanmar. People have become adept at coping with the problems they face in a range of ways. It should not be assumed that justice problems can be resolved by establishing new processes or institutions that adhere to external ideas of justice.

More important is investing in understanding the complex and varied ways in which people already think about and resolve disputes.

While legal literacy is low, simply raising awareness about ‘justice’ and its importance could have negative effects: strengthening strongly ‘law and order’ approaches to justice, or ideas that justice is about making problems disappear. A better place to start could be to broker community conversations about what justice means and what role it can play in Myanmar’s future. Working ‘with the grain’ of existing justice practices suggests that engagement with the W/VTAs is necessary. It will similarly be important to work with the police and the EAO courts.

External assistance could usefully focus on a strategic selection of key justice problems, and engage justice facilitators and providers through the lens of these problems. This focus offers increased potential for achieving tangible changes in a few key areas. Issues such as debt disputes, discrimination, violence against women and labour disputes, which affect large numbers of people, appear to offer opportunities for engagement.

Finally, this research points to a range of areas that would benefit from further research and speaks to the fundamental importance of building greater knowledge of local understandings of justice and justice-seeking behaviour in Myanmar. This requires an ongoing process of learning, given variation across the country, as well as the state of flux that characterises many aspects of justice.

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