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Reforms need to consider local dispute resolution

JUSTICE PROVISION IN MYANMAR

In Myanmar, most disputes and crimes are resolved in villages and local neighbourhoods. Reforming the official justice system is crucial, but support should also engage existing local mechanisms.

Myanmar's transition from military rule to democracy and from armed conflict to peace remains fragile. The military retains considerable political power, and fighting is continuing in the north, while peace negotiations are being conducted with eight of the existing 21 ethnic armed groups. At the same time, the democratically elected National League for Democracy (NLD) government (since April 2016) is pursuing governance reforms and development initiatives with international support. The NLD, under

RECOMMENDATIONS

- Justice sector reform must work with the fragmented reality of justice provision in Myanmar and target both the official system and local-level dispute resolution mechanisms, as well as discuss ways to integrate ethnic armed-group systems.
- To be effective, support must rely on in-depth knowledge of local justice perceptions, and center on building trust and encouraging broad participation at the local level.
- Support to local dispute resolution should encourage the inclusion of vulnerable groups and help develop transparent guidelines and clear mandates for local providers.

There is a strong focus on avoiding conflict escalation, rather than punishing perpetrators

70 % of respondents believe that cases are best resolved locally. The mistrust in the official system can only partly explain this. Cultural and religious perceptions also inform preferences for local and informal justice.

the de facto leadership of Aung San Suu Kyi, has made national reconciliation and the rule of law its top priorities. This includes a justice sector reform to ensure equal access to fair trials and desirable justice outcomes for all citizens.

So far, efforts have focused on improving the official judiciary—an important and long-term process. This, however, ignores the fact that it is local actors that are the main justice providers, while in some of the ethnic minority areas the court systems of ethnic armed organisations also play a strong role. Ordinary citizens prefer to have crimes and disputes resolved within their community through more informally negotiated settlements. Taking a case to court is time-consuming and costly, and after decades of military rule, most people experience the official system as intimidating. A general perception exists that those with powerful connections and financial means win cases, irrespective of the evidence. Cultural and religiously informed perceptions of problems also support local dispute resolution.

LEGAL PLURALISM AND ALTERNATIVE JUSTICE PROVIDERS

Myanmar is characterized by legal pluralism. A variety of actors engage in resolving disputes and facilitating justice, including local leaders and elders, ethnic armed groups, religious or spiritual persons, and civil-society actors. Different rules, norms and perceptions of justice co-exist and mix. This plurality is not officially recognized, as today the judiciary has the exclusive legal authority to administer justice.
In areas administered by the Myanmar government, the main actors who settle disputes and minor crimes are the leaders of the villages, village tracts and wards. These are locally elected and commonly rely on the advice of local elders. They primarily enforce compensational justice and try to reach consensus-based agreements through negotiations and mediation. They do not apply written law in any literal sense, but may make sporadic references to it as part of informal proceedings. There is a strong focus on avoiding conflict escalation, rather than punishing perpetrators. The most common cases they resolve are land and marriage disputes, money-lending disputes, thefts, physical fights, public nuisances and to a lesser extent rape and domestic violence. Very few cases proceed beyond this level.

The ward and village leaders are part of the state administrative system, but they are detached from the judiciary, having no system of appeal and referrals, nor any clear mandates for dealing with cases. This creates a large variety in how disputes are resolved, and it nurtures different informal ways of (dis) engaging with the formal system. Although local leaders refer to the official system as an important back up, usually in the form of a threat to send people to the police if they do not agree to local decisions, they simultaneously warn people that going to court is a waste of time and money. Even lawyers often encourage litigants to negotiate resolutions outside the courts.

Although ward and village leaders handle the majority of disputes, people also seek help from 'informal justice facilitators' who have no explicitly recognized role in justice provision, but who can give advice, connect people with justice providers or pressure the opposite party to pay compensation. These include religious and spiritual leaders, like Buddhist monks, astrologers and spirit mediums. Elders, household leaders, the educated, women's groups, political party members and individual armed actors are also used as facilitators. For instance, in one land-confiscation case, the victim received help from a powerful monk to get some land back. And in a theft case, a spirit

medium was addressed to identify the perpetrator. Some female victims also report first to the local women's group, which then assists them to resolve the case with the village or ward leader. 'Justice facilitators' can both substitute for and help facilitate a third-party resolution. When people face politically sensitive issues, like land confiscations, which the local leaders fear to settle, victims often try to get their land back by seeking help from those who are believed to have powerful connections, like monks, the educated or armed actors. The use of justice facilitators is a strong illustration of the complex justice pathways that exist.

In conflict-affected and some ethnic minority areas there is also a preference for local solutions. If local leaders cannot resolve a dispute or crime, they seek help from the main ethnic armed groups, who have their own courts, laws and prisons. Unlike the official judiciary, these ethnic systems have institutionalized links to the village level and are seen as more legitimate and less corrupt than the official courts. However, they face human resource constraints. Because they are not officially recognized, they sometimes operate in a mobile and partly secret fashion, which compromises the quality of justice.

PEOPLE'S JUSTICE PREFERENCES SUPPORT LOCAL DISPUTE RESOLUTION

The DIIS-coordinated EverJust research project in Yangon and Mon and Karen States found that 70% of respondents believe that cases are best resolved locally. The mistrust of the official system can only partly explain this. Cultural and religious perceptions also inform preferences for local and informal justice. There is a shared cultural notion that the purpose of justice is to 'make big cases small and small cases disappear'. This supports a preference for social harmony and reconciliation. Bringing one's dispute into the public realm by involving a third party is associated with conflict-escalation, which causes feelings of shame. Such feelings increase when the failure of the parties to settle a dispute with a local village or ward leader requires the involvement of a higher authority. Religious perceptions of problems and injustices as the result of fate and, for Buddhists, past life deeds may also inform the tendency not to seek remedies. Some even prefer to internalize the problem and make peace with it, sometimes combining it with seeking spiritual remedies to ease the suffering. These perceptions are widespread, but they tend to influence vulnerable groups like poor migrants and women disproportionally because of fears of authority

Astrologer helps to resolve a family dispute, ©Helene Kyed

EXAMPLE OF AN ETHNIC ARMED GROUP JUSTICE SYSTEM

The Karen National Union (KNU) has operated a justice system since the 1970s in the areas it administered during the armed conflict and after it signed a ceasefire in 2012. It has a three-tiered system of courts, a police force for investigations and arrests, prisons, and three main codified laws for civil, criminal and witchcraft cases, as well as a code of legal procedure that also covers village dispute resolution. Although judges are not professionally trained and no lawyers are used, the judges should apply the written laws, which are based on Western jurisprudence, as in officially recognized states. The KNU supports Karen village leaders in resolving civil disputes and minor crimes, and it has a system of appeal beginning at the village level. Villages can make their own by-laws and apply local customs. Female leaders are empowered to help in cases involving women. When cases cannot be resolved inside the village, there is a clear preference for turning to the KNU system, which is cost-free, uses the ethnic language, and is less mistrusted than the Myanmar courts. However, unclear jurisdictional boundaries with the Myanmar government mean that it is difficult to operate transparently and decide cases involving non-Karen. Judges also expressed concern over human resource constraints and the need for legal training.

and of the financial cost of seeking justice, which are more prevalent among vulnerable groups. Combined, these factors support local dispute resolution and highlight the need for any justice sector reform to be sensitive to people's reluctance to seek third-party mediation outside their own communities.

INTERNATIONAL SUPPORT SHOULD INCLUDE THE LOCAL LEVEL

Very little support is given to the local level of justice. When communities are targeted, the focus is on how people can access the formal system. Legal awareness is needed, but it is important to be realistic about what formal justice options can entail. International support should begin with already existing local dispute-resolution forums, rather than establish alternative institutions. A good starting point is to focus on success stories and then identify areas for improvement, based on participatory dialogues with local providers of justice and ordinary citizens. A deep understanding of actual practices and cultural-religious perceptions is needed to avoid pre-conceived templates. This requires long-term investment in obtaining context-specific knowledge, building trust and ensuring broad participation.

Support can be given to the gradual inclusion of vulnerable groups in local dispute-resolution forums and to the drawing up of transparent guidelines for how disputes should be resolved and the alternative options people have. Another area is to encourage village and ward leaders being given clearer mandates and links to the formal system within the legal framework. Given the current reality of justice provision in conflict-affected areas, it is equally important to consider to what extent the systems of the ethnic armed groups can be recognised and/or integrated. This should involve bridging peacebuilding efforts with support to reform of the justice sector, as well as of governance more generally.

This policy brief is based on research conducted by the 'Everyday Justice and Security in the Myanmar Transition' (EverJust) project, coordinated by DIIS in partnership with Yangon University, the Enlightened Myanmar Research Foundation and Aarhus University.

See www.diis.dk/en/everjust

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Coverphoto: Karen village chairman showing the case register to the researchers. © Helene Maria Kyed